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State of Washington  
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SUPREME COURT  
STATE OF WASHINGTON  
9/16/2021  
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Cause No. 100214-9

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WASHINGTON STATE SUPREME COURT

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ROBERT LEE FREEMAN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondant.

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PETITION FOR REVIEW

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Requesting Review of C.O.A.# 81054-5-I

Robert Lee Freeman

(Print Your Name)

Petitioner, *Pro se.*

DOC# 854002, Unit WSR A-417-L

Monroe Correctional Complex

(Street Address)

P.O. Box 777

Monroe, WA 98272

WASHINGTON STATE SUPREME COURT

ROBERT LEE FREEMAN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondant.

No. \_\_\_\_\_

**PETITION FOR REVIEW**

**I. IDENTITY OF PETITIONER**

Mr. Robert L. Freeman asks this Court to accept review of the decision designated in Part II of this motion.

**II. DECISION**

Mr. Freeman asks this Court to accept review of the following decision or parts of the decision filed on June 7th, 2021

The decision (Did what): held that retesting DNA evidence in Freeman's case would not "raise a reasonable probability the petitioner was not the perpetrator."  
See Riofta, 166 Wn.2d at 367-68. Freeman filed a Motion to Reconsider, and the State responded, and that Motion was denied on August 24th, 2021, starting the 30 day

time limit under the RAP rules to file this Petition. It is noteworthy to this Court that Freeman replied to the State's response to his Motion for Reconsideration, noting that the State tried to argue that this was not a direct appeal, and that his Statement of Additional Grounds filed under RAP 10.10 should not be reviewed because this was not a matter on Direct Review, even though the State correctly titled their response as a pleading in a direct review matter. The State failed to challenge any of the documents, claims or exhibits submitted in Freeman's briefings, simply stating the court should not review them. The State conceded to his claims by not bringing factual statements and arguments with documentation to dispute them, and should have been reviewed on the merits without further comment from the State. Freeman's claims in his SAG, and in his Motion for Reconsideration, as well as his reply to the State's response should be considered as varitys on appeal.

Freeman also includes the original briefing from his Attorney Lance Hester, where counsel submitted a Writ of Coram Nobis which included the claim of retesting under the Statute, then transferred up improperly as a PRP to Division I, then remanded back due to the Statutory language included in the rule mandating that the trial court hear and decide the motion for evidence retesting. Freeman waited for the conclusion of the trial court action before approaching the Washington State Supreme Court on the issues surrounding the improper handling of the Writ. The Writ is attached as "Exhibit 1".

### III. ISSUES PRESENTED FOR REVIEW

1. Freeman's right to a fair trial under Art. 1, section 22 and the 5th, 6th and 14th Amendment of the U.S. Constitution was violated by the State knowingly submitting substitute DNA evidence that was knowingly withheld 1½ years until trial on March 18th, 2003. The samples that were gathered and documented in the photo were collected October 5th. 2001.

2. The Appellate Court improperly denied Freeman's request for DNA retesting under RCW 10.73.170(3), the testing would reveal that the State never had evidence they said they did in the charging information, probable cause statements and testimony at trial, showing that Freeman's claims as contained here are founded. Virginia Freeman, Robert's estranged wife at the time of the search, gathered her own samples thru a "kit" that Detective Dahlin gave to her, including swabs, petrie dishes, packaging and labling, etc., and those samples made it back to the jury over defense objections after the Judge ordered them not to be shown to the jury until all of the chain of custody issues presented on the record were resolved. The Appellate ordering testing as requested by Freeman would reveal that Freeman's claims that his ex-wife set him up during a divorce that she initiated to relieve him of substantial community assets and custody of thier young son Tony, have been true. Mr. Freeman has maintained his claim of innocense since the begining, even bringing these claims in his first SAG in 2003.

3. The trial court applied the wrong test to the Writ of Coram Nobis, where it cherrypicked the issues within the Motion based on the Washington State rule mandating the trial court to take action on the claim for retesting, (See Exhibit "1", Writ of Coram Nobis, pgs. 36-39 of Memorandum, attached). The 4 part test for the writ and its claims is outlined on pg. 17 of the Memorandum, and Freeman incorporates by reference to avoid duplication for the convenience of this Court.

The Federal rule also dictates that the Writ, when specifically titled "Writ of Coram Nobis" be heard and decided by the court that rendered judgment. Here, the trial court granted Mr. Freeman the right to a decision under the State rule for retesting, but denied his right under the same rule in the fed's for the remainder of the claims contained within the Writ.

4. The Appellate Court denied Freeman's State and Federal right to a fair trial when it did not dismiss his case due to the Brady Violations surrounding the withholding of the DNA samples as described in great detail in the Writ of Coram Nobis, also in Freeman's SAG, and in the documents and exhibits attached to his SAG with the transcripts and affidavits attached to the criminal charges that were brought in the case outlined in the SAG as well. Noteworthy to this Court the the State failed to challenge the claims and documents Freeman provides, not bald assertions under the rule, but now varieties on the record for review.

#### IV. STATEMENT OF THE CASE

Mr. Freeman would like to incorporate by reference the introduction found on pgs. 1-10 in Exhibit "1", the Writ of Coram Nobis. Mr. Hester has done a professional job at explaining much of the factual history, supported by the transcripts and exhibits attached. This case is one of a kind, where the State openingly acknowledges that it never produced the DNA carpet samples it referenced in discovery with photos taken by Detective Dahlin at the Freeman family home on October 5th, 2001 during a secondary search that followed Detective Michaels search on September 17th, 2001, to which he filed a report stating no evidence had been found. The secondary search was performed by both Dahlin and Virigina Freeman, Robert's estranged Wife at the time who had just filed for divorce, and was in a custody battle for Robert's 12 year old son, Tony.

Most noteworthy to this court is that Virigina had just signed off on Freeman's security clearance with the White House since Freeman was appointed by the president on the advance team, and had applied for foster parentage with a 17 year old girl, serina, and had filed papers to host several high level exchange students, which were all young woman, and had signed sworn statements that there had never been any crimes or trouble in the household. She however testified that she allegedly knew about the proposed abuse for years, and had saved evidence for years to be used against Robert when she was ready. The Sworn affidavits she filed with the United States Marshals Office would counter that testimony, and subject her to prosecution, and she was not offered

immunity by King County for her testimony, none that was disclosed by the rules governing those activities of the prosecuting attorney, who was Andy Colasurdo at the time of trial.

More recent, Freeman filed his Motion to Reconsider the Division I's denial of his Direct appeal on June 7th, 2021, and King County filed a response that was called for by the Appellate Court. Freeman replied, citing that the State had forgone any challenges to his claims, only stating that the Court should not treat his direct appeal as a direct appeal, and disregard his claims. (See the motion and reply contained in the casefile forwarded by division I to this body).

Currently, the Monroe Correctional complex is being closed, and the law library is often closed, and access to legal materials and counsel is at a minimum. Mr. Freeman asks this court to appoint counsel to explain his complex issues so this Court can fully understand the constitutional magnitude of the violations that have occurred here. Mr. Freeman maintains his innocence, and has always advanced his claims of wrongdoing by the State even in his original appeal, looking to his SAG there would substantiate this, and show that none of his claims should be timebarred simply at the whim of the State to save face. Here, the State is more worried about a full and fair hearing, where it would have to answer for the coverup and misconduct that is briefed clearly in the Writ attached, and the SAG that Freeman filed in the Direct Appeal that is in the casefile here. This Court should exercise its revisory authority, and take this case to insure justice is administered in the face of the facts.

PETITION FOR REVIEW

PAGE: 6 OF 10

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Under the RAP rules, this Court may only accept review if the decision of the Court of Appeals conflicts with another decision of the Court of Appeals, or a decision of the Washington State Supreme Court, or the State or Federal Constitution, or if its decision would raise a issue of public interest.

Mr. Freeman asks this Court to accept review of his first ground because it raises to question his right to a fair trial under Article 1, Section 22 of the Washington State Constitution, as well as his 5th, 6th, and 14th Amendment rights under the Constitution of the United States. Freeman incorporates by referance his citations to the decisions of this Court on pgs. 7, and 10-12 of his SAG, citing Rohrich, 149 Wn. 2d; Wilson, 149 Wn. 2d; Michielli, 132 Wn. 2d; Blackwell, 120 Wn. 2d on pg. 7. The above cases would demonstrate a conflict between Division I's decision here, and this Court's prior decisions listed above. Additionally, on pg. 11 Freeman cites Brady v. Maryland, 373 U.S. to federalize his claims here, and other Washington State Supreme Court decisions along with federal supporting cases listed therein. Most importantly, Freeman raises his claim under U.S. v. Agurs, 427 U.S. to support his claims in King County District Court cause number 75-6311 LEA CIV. The referance is on pg. 12 of his SAG included in the casefile. He also cites to Cramer v. Fahner, and Freeman v. State of Georgia as well. In the District Court, Freeman's family was present when the judge ruled that he agreed with the evidence errors in his pleadings, but did not want to bring the



criminal charges against Norm Meleng, Andy Colasurdo and Ann Marie Summers because of the horrible police work performed by Detective Dahlin. But, as cited to above, the liability is imputed to the prosecutor, as he is responsible for the actions of his teammates in this matter. The transcripts of that hearing are available, and Freeman simply requests this Court remand for a reference hearing to substantiate his claim therein.

Freeman also incorporates by reference the citations of caselaw in his Attorney's Writ of Coram Nobis attached as Exhibit "1", where on pgs. 13-15 Hester cites the supportive authority that requires the Court to dismiss Mr. Freeman's case due to the documented violations in the transcripts, affidavits and documents provided within that brief. The actions of the Appellate Court conflict with the State Supreme Court cases cited within, and also violate and conflict with both the State and Federal Constitution as cited to in Freeman's pleadings.

Since the State failed to challenge Freeman's claims with documentation and exhibits to argue why his request for relief should not be granted, the state has waived its opportunity to do so, and relief should be granted here.

As to Freeman's second ground, he cites to the briefing in Attorney Hester's brief on pg. 36. Additionally, Freeman cites to the BRIEF of APPELLANT that attorney Sweigert filed in his direct appeal, where on pg. 7-10 she briefs the case of Braa, 2 Wn. App 2d in regards to the defense Freeman relies on to show his innocence other than simply excluding his DNA, where a claim

such as the State substituting false evidence here in order not to have the entire case dismissed in violation of Freeman's basic fair trial rights have been documented here in such detail.

Freeman submits that this Court should accept review due to the decision of Division I conflicting with both the Supreme Court decisions, and the State and Federal Constitution.

As to his third ground, Freeman incorporates by reference the caselaw cited to in Exhibit "1", where attorney Hester cites on pgs. 15-19 the law as it pertains to the Writ. Most notably, this Court's decisions in both Mason, 25 Wn. 2d, and Hensley, 27 Wn. 2d. (See pg. 16, para 1). This Court may accept review due to the conflict of the Div. 1's decision and the above caselaw.

And as to his fourth ground, the caselaw above in Brady and Blackwell should satisfy this court's requirements outlined in RAP 13 to accept review in Mr. Freeman's case. As Freeman was found indigent in the Court of Appeals case referenced herein, he asks that his filing fee be waived, and counsel be appointed to more efficiently argue his claims. Mr. Lance Hester, the author of the Writ of Coram Nobis, would be Freeman's choice to best flush the claims from the record here.

#### VI. CONCLUSION

Based on the foregoing facts and arguments, this Court may accept review, and grant any and all relief afforded to Mr. Freeman. As stated by Mr. Freeman throughout his claims since the beginning, every innocent prisoner has stood before

the court with facts, documents and transcripts demonstrating that he was innocent, but the State continued to argue he was wrong. Every single innocent prisoner had to overcome odds that prove unbeatable for many. And in this case, Freeman continues to point to the record, the record that does not demonstrate that he is guilty beyond a reasonable doubt, but a record that demonstrates that every possible fact to support his claim is on the record, and in his case, horrible violations of his fair trial rights had to occur to have the record reflect what he and counsel provides herein. There are honest people among you, if not all of you. All Mr. Freeman asks is that you do not dismiss his claims simply because the State says look the other way. How many cases do you all review where the estranged wife files the charges, collects the evidence, and hides the evidence for years, even filing federal documents in Freeman's security clearances aboard Air Force One saying he is the best father and husband the world can offer, but then turns around and testifies that she knew all along that bad acts were being committed, but looks the other way because she is not ready to bring the claims forward? The suffering by Mr. Freeman here is beyond tragic, suffering at the hands of his ex-wife who uses this court and every bench at her beckon call, wielding the power of justice for her, and her benefit alone. Please, I beg this Court to at least order the hearings that will set the record straight, and provide the much needed relief I seek. Thank you for listening, Sincerely,


 9-11-2021

Exhibit "I"

Writ of Coram Nobis

CLIENT'S COPY

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING AT KENT

|                      |   |                             |
|----------------------|---|-----------------------------|
| STATE OF WASHINGTON, | ) |                             |
|                      | ) |                             |
| Plaintiff,           | ) | No. 02-1-01727-1KNT         |
|                      | ) |                             |
| vs.                  | ) | MOTION AND MEMORANDUM TO    |
|                      | ) | DISMISS UNDER WRIT OF CORAM |
| ROBERT LEE FREEMAN,  | ) | NOBIS AND UNDER CrR 8.3     |
|                      | ) |                             |
| Defendant.           | ) |                             |
|                      | ) |                             |

MOTION

COMES NOW the defendant, Robert Lee Freeman, by and through his attorney, Lance M. Hester of the Hester Law Group Inc., P.S., and moves this Court for an order dismissing Mr. Freeman's case under a writ of coram nobis and under CrR 8.3. It is the defense position this court, under the writ of coram nobis, is the preferred court for this post disposition matter, as it is a matter best heard by the trial court.

THIS MOTION is based on the files and records herein and upon the memorandum filed in support thereof.

DATED this 28<sup>th</sup> day of September, 2018.

HESTER LAW GROUP, INC. P.S.  
Attorneys for Defendant

By:   
Lance M. Hester  
WSB #27813

1 **MEMORANDUM**

2 **Introduction**

3 Robert Freeman returns to the trial court by way of this motion seeking the relief  
4 requested in the section below. A review of Mr. Freeman's trial material reveals the  
5 following: Freeman's conviction included the introduction of inadmissible DNA evidence  
6 and justice requires his case be dismissed, or, the matter be referred for additional DNA  
7 testing. Trial irregularities occurred, and the irregularities have not been adequately  
8 addressed during the attempts Freeman has previously submitted for post-conviction review.

9 This motion is based on the arguments contained herein, the exhibits referenced and  
10 attached, the Declaration of Robert Freeman, and the Declaration of Suzanna Ryan. (The  
11 Declaration of Lance Hester, counsel for this motion, is attached for referencing relevant  
12 materials for the court's consideration.)

13 **Relief Requested**

14 Mr. Freeman requests the trial court dismiss his case under CrR 8.3 and the Writ of  
15 Coram Nobis. In the alternative, Freeman requests DNA testing under RCW 10.73.170. He  
16 asks the court to recognize the relief he seeks is best adjudicated by the trial court (rather  
17 than the trial court forwarding it to the Court of Appeals) as the trial court is in the best  
18 position to remedy the circumstances as this is the first opportunity Freeman has had to  
19 address the trial irregularities. Freeman's argument, herein, focuses on exposing the  
20 substandard management of DNA evidence and the resulting prejudice to Freeman.

21 **Background**

22 This section is a review of the basic procedural and factual case history. A detailed  
23 discussion of the facts considering the law regarding admissibility of scientific evidence in  
cases involving DNA evidence follows.

24 *1. Charges, Probable Cause, and Sentence*

25 On March 14, 2002, Mr. Robert L. Freeman was charged with four counts of Rape of  
a Child in the First Degree. All the allegations were said to have occurred between October

1 30, 1992 and October 29, 1994. *See* Information. The charges were later amended, adding  
2 several additional charges.<sup>1</sup>

3 The probable cause statement supporting the Information asserted Mr. Freeman's  
4 step-daughter, Amie Freeman, made disclosures of sexual abuse during a 2001 interview.  
5 *See* charging document (Superior Court case file). The probable cause statement specifies  
6 Mr. Freeman began touching her when she was nine or ten years old, that he began by  
7 coming into her bedroom at night and rubbing her back. *See* Probable Cause Statement  
8 (Superior Court case file). She alleged that over time he began to rub her buttocks and her  
9 genitals under her pants. She further claimed he would masturbate while rubbing her. Her  
10 interview included claims that by the time she turned 11 years old Mr. Freeman was putting  
11 his fingers inside her vagina. She claimed that one time Mr. Freeman got into bed with her  
12 and while both remained clothed he rubbed his penis against her covered genitals, but that his  
13 penis never directly touched her genitals. The alleged conduct was said to have continued up  
14 through a time when Amie was 15 years old. Mr. Freeman was interviewed by a detective  
15 and denied the claims.

17 Just before trial, the state amended the information, proceeding to trial on the  
18 following charges: rape of a child in the first, second, and third degrees and child molestation  
19 in the first, second and third degrees, all between October 30, 1992 and October 29, 1998.  
20 CP 32-34.

22 Mr. Freeman was convicted. *See* Jury Verdicts and Judgment and Sentence (Superior  
23 Court case file). He was sentenced to 280 months incarceration. *See* Judgment and Sentence  
24 (Superior Court case file).

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<sup>1</sup> The complaining witness's testimony centered around activity alleged to have occurred in a home that wasn't built until 1996. *See* Freeman Declaration.

1           2.       Evidentiary Summary

2           On September 17, 2001, for charges unrelated to this case, Mr. Freeman's then-wife,  
3 Virginia Freeman, made a report that resulted in the police removing Mr. Freeman from the  
4 family home. RP 138. During the investigation, the police learned that Virginia had separate  
5 concerns of sexual activity between Mr. Freeman and Amie Freeman, his stepdaughter - a  
6 minor, and the officer took down a summary report. RP 140, 314. Virginia reported Amie's  
7 accusations dated back vaguely, but at a minimum appeared to be a year before Virginia  
8 complained of the September 17, 2001 assault. A no-contact order soon went into place  
9 which forbade Mr. Freeman from contacting the home. (In fact, he did not return to the  
10 home until 2002, a year later, during a police "civil standby" escort to gather some personal  
11 belongings - as allowed by the judge in the present case. *See Exhibit 1, Declaration of*  
12 *Robert Freeman.*

14           The following day, September 18, 2001, King County Sheriff's Deputy Michaels  
15 returned to the Freeman home and looked for evidence substantiating Virginia's claims of  
16 Robert abusing Amie. Because Michaels located no relevant forensic evidence, he collected  
17 no evidence. *See Exhibit 2, Declaration of Lance Hester*, referencing Michael's report  
18 (Exhibit 2A). In fact, Michaels noted that because there was no recent alleged activity, there  
19 was no evidence present to collect. *Id.* Michaels' search occurred two and a half weeks  
20 before the lead detective on the case, Detective Vivian Dahlin, began her involvement in the  
21 case. Michaels report states, "No physical evidence located or available due to no recent  
22 assault reported by victim." *Id.* Also of note, pertaining to Michaels's original search, is his  
23



1 reference to leaving Amie's diary that was brought to his attention, saying he "left it with  
2 them because they were not finished with it yet."<sup>2</sup> *Id.*

3 *a. Police Search, DNA Collection.*

4 Finally, Detective Dahlin became involved in the allegations. Nearly three weeks  
5 after Michaels' initial investigation, on October 5, 2001, Detective Vivian Dahlin conducted  
6 a search of the home. RP 315-16. By that time, Virginia Freeman had essentially staged the  
7 property for the search, including preparing Amie's room for Dahlin's entry, photographs  
8 and processing<sup>3</sup>. Because Virginia reported that Amie had been sexually abused in her  
9 bedroom and that the abuse, in part, included claims Mr. Freeman masturbated and ejaculated  
10 onto the carpet, the focus of the detective's visit was on stained carpet spots in Amie's  
11 bedroom. (There was an additional claim that Freeman ejaculated onto a teddy bear.) During  
12 the search, photos were taken of the evidence collected by Dahlin, including their locations  
13 before cutting out carpet squares. RP 316-19. The photograph clearly depicted markers with  
14 numbers "VED 1", "VED 2", and "VED 3." *See* Trial exhibit 12 – showing evidence samples  
15 at scene. Detective Dahlin testified her carpet sample collection was limited to only three  
16 samples. RP 316, 322-24. By the time evidence was reviewed prior to trial, Dahlin had  
17 created an evidence inventory that did not include references to VED 1, VED 2, or VED 3.  
18 Her evidence inventory report only included items VED 11, 12, 13 (as opposed to trial  
19 exhibit numbers, which ultimately were admitted into evidence as follows: VED 11 admitted  
20 as Exhibit 18, VED 12 as Exhibit 19, and VED 13 as Exhibit 17 two carpet samples with  
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25 <sup>2</sup> This diary issue was addressed in the appellate courts and, despite the issues it raises, is not being addressed in this motion because in fact it was previously addressed.

<sup>3</sup> Dahlin's lack of qualifications for DNA collection is further discussed herein.

1 suspected semen, and a control carpet sample. RP 323, 325, 375<sup>4</sup>. After identifying the  
2 sample locations, including a “control sample,” Dahlin stated, “I took my scissors, and I  
3 clipped the stained areas, and put them in the individual *plastic dishes*, and then into the  
4 envelopes, and I did this for all three areas.” RP 326 (emphasis added). During her  
5 testimony, Dahlin conceded she is not a DNA expert. RP 361. Importantly, Dahlin failed to  
6 utilize the assistance of trained forensic scientists in the collection of suspected fragile and  
7 aged DNA. (See RP 326, wherein Dahlin references “I clipped... and I did this for all three  
8 areas.) This constituted the collection phase.

9  
10 *b. DNA Storage*

11 As for the storage phase of the DNA analysis process, absurdly, Dahlin left the carpet  
12 samples with suspected delicate DNA material in the plastic containers, inside envelopes, and  
13 inside her car for a week -- and then in her office for a period -- until October 16, 2001. This  
14 was a full eleven days following collection. Finally, it was transferred and stored in the  
15 county evidence facility for a full year. RP 328-31. It was not until after that year it was  
16 submitted to the state lab for analysis.

17 *c. DNA Chain of Custody and Lab Analysis*

18 At trial, the only witness with any forensic evidence training, scientist Beverly  
19 Himick, testified about her analysis of certain DNA evidence in this case. RP 365. Dr.  
20 Himick testified that her duties included working with bodily fluids and DNA identification.  
21 RP 366.  
22  
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25 <sup>4</sup> During closing arguments, defense counsel pointed out the photographic exhibit (Trial Exhibit 12) showing the collected samples were numbered VED 1, 2, and 3, and that there was no trial evidence or testimony proving these were tested, nor that they were in fact the tested samples that were numbered VED 11, 12, and 13. See RP 818-819.

1 Dr. Himick testified that her work included testing two cuttings from carpet, a teddy  
2 bear, and three known reference samples (including a known sample obtained directly from  
3 Mr. Freeman). RP 369-70. She identified the carpet cuttings she analyzed as VED 11 and  
4 VED 12. RP 370. These are noted in the evidence log as being collected on October 16,  
5 over a week following the original search. *See* Exhibit 2B, Evidence Log, as prepared by Det.  
6 Dahlin. As previously noted, these two items corresponded with the trial court's exhibit  
7 numbers 18 and 19. RP 372-73. (The record is void of her referencing analyzing any  
8 samples that were referred to as VED 1, VED 2, or VED 3.) Exhibits 18 and 19 were  
9 admitted without defense objection. RP 373. (But note, the defense previously objected to  
10 their admission before the court allowed their conditional admission. RP 333, 338.)  
11

12 The teddy bear was collected as VED 14 and then analyzed by Dr. Himick. RP 375.  
13 By the time of trial, the court numbered the bear Exhibit 16. *Id.*

14 During Dr. Himick's trial testimony she explained what DNA is, and she testified that  
15 as a DNA forensic scientist, she can both identify an individual and exclude an individual  
16 through his or her DNA profile. RP 388. This, she testified, is done through comparing  
17 evidence samples to known samples. RP 389. While conducting DNA comparisons, Dr.  
18 Himick testified that she ultimately accesses the FBI database on the frequencies of variable  
19 regions and is able to see how rare or common a profile is, and calculate the odds of selecting  
20 someone at random who would have the same profile as the matched comparison. RP 390-  
21 91.  
22

23 Dr. Himick also examined the samples for the presence of semen. The testing looked  
24 for high concentrations of protein called acid phosphates, and Dr. Himick's examination and  
25

1 positive acid phosphate testing results gave indication semen was present in two locations on  
2 the teddy bear. RP 392. She found sperm cells present as well. RP 392-93.

3 After determining the existence of semen and sperm in the carpet samples and on the  
4 two regions of the teddy bear, Dr. Himick next extracted the DNA out of the cells in the  
5 stains. RP 395.

6 Himick then explained her next steps included, "extract[ing] the DNA out of the cells  
7 that are in those stains, and then, using the STR technology, target[ing] those variable  
8 regions, copy[ing] them up with the PCR process that I explained, which is the chemical  
9 photocopying process, and then generat[ing] an overall profile for that sample." RP 395.  
10 The profile for the semen/sperm/DNA on the teddy bear, she claimed, was a single male  
11 profile. The DNA extracted from the bear did not indicate a second person, only a single  
12 male, which was a match to the known samples from a buccal swab from Robert Freeman.  
13 RP 396. She further testified to calculating the "estimated probability of selecting an  
14 unrelated individual at random from the U.S. population with a matching profile is 1 in 64  
15 quadrillion." RP 398.

16  
17 Dr. Himick testified she employed the same process for the carpet samples. RP 399.  
18 However, in items VED 11 and 12 (carpet samples), she testified she had "a mixture of two  
19 individuals in those stains." RP 399. She testified to separating those out using a  
20 "differential procedure." RP 399. In short, she located sperm cells and the sperm cells were  
21 a match to Mr. Freeman's known DNA, and the other profile matched Amie Freeman. RP  
22 400. She conceded being incapable of determining where the non-sperm cells came from.  
23 RP 402.  
24  
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1 As previously noted, the testimony did not specifically address VED 1, 2, and 3  
2 depicted in Exhibit 12.

3 Dr. Himick acknowledged the second DNA samples, those of Amie, could have  
4 arrived amongst Freeman's sperm cells simply from years of living there – possibly even  
5 from passively losing skin cells in that location over the years. RP 404.

6 The trial court allowed Dr. Himick to offer her opinion testimony as to whether the  
7 testing she conducted was consistent with the scenario of "Robert Freeman had sex with  
8 Virginia Freeman, ejaculated inside of Virginia's vagina, and that the sample that you see on  
9 the carpet dripped from her?" RP 408. She answered, "I would think it's highly unlikely,  
10 and the reason is because I would expect to see some of Virginia Freeman's cells present in  
11 the stain, and I don't see her at all. In fact, she's excluded from the entire stain. And, so,  
12 there's no source of her cells there, and it just – in samples that I have worked on, where  
13 there has been ejaculation in the vagina, there are sources – there is a mixture of cells going  
14 on. So, any drainage that is happening, there's usually a mixture of some of the female cells  
15 that are present. And, in this case, I don't have any evidence of her in those stains." RP 408.  
16 She went on to testify that sperm deposited on carpet can last 5-20 years. RP 409. Dr.  
17 Himick conceded she is incapable of determining *when* the carpet DNA deposits were made.  
18 RP 410.

19  
20 Upon cross-examination by defense counsel, Himick testified that there are a lot of  
21 possibilities as to how the DNA got into that room. RP 414. In fact, Dr. Himick  
22 acknowledged Amie's DNA could have resulted from sneezing, coughing, brushing her hair,  
23 or walking on the carpet. RP 414. And she acknowledged the fact that Amie's DNA being  
24  
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1 present with Robert's DNA does not indicate any kind of sexual conduct or contact between  
2 them. RP 414.

3 Dr. Himick also acknowledged that she was only given two samples to consider and  
4 that there very well could have been other people's DNA samples in the room. RP 415.

5 The state relied upon DNA evidence for the conviction it achieved. During closing  
6 arguments, the deputy prosecuting attorney argued, "You have DNA evidence. ... The DNA  
7 found in her carpet and on that bear was from sperm." RP 850, and references at 806, 807,  
8 808.

### 9 Summary of Argument

10 *This motion addresses the following:*

- 11 • *This court's jurisdiction to hear the case under CrR 8.3 and the Writ*
- 12 *of Coram Nobis.*
- 13 • *The remedy sought is dismissal.*
- 14 • *Violation of forensic standards for DNA processing (and defense*
- 15 *counsel's ineffectiveness addressing the violations).*
- 16 • *An alternative request for re-testing the relevant DNA evidence under*
- 17 *RCW 10.73.170.*

18 The prosecution of Mr. Robert Freeman included a heavy reliance on DNA evidence  
19 to support the sexual conduct claims advanced by the alleged victim. The State of  
20 Washington introduced delicate DNA evidence that was collected, managed and stored  
21 without any forensic expertise (collected by a general detective rather than a forensic  
22 technician or somebody with the training and skills to collect such evidence - completed in a  
23 manner that could not ensure the integrity of the evidence). In fact, during the collection  
24 process, a photograph was taken that depicted the alleged victim's mother's (Virginia  
25 Freeman) finger contacting carpet that was subsequently cut from the floor of a home to be  
processed for DNA typing. RP 320 and *See* trial exhibits 11 and 12 (Regarding trial exhibit  
11, a close-up of the carpet, "Virginia Freeman's hand and finger is pointing to a stain on the  
carpet.") *See also* trial exhibit 12, copy of exhibit showing markers identifying suspected

1 stains containing suspected DNA, that were ultimately cut out, collected, packaged,  
2 transported, stored, and tested. Upon the detective cutting the carpet samples out, the  
3 detective elected storing them in plastic containers and in envelopes in the trunk of the  
4 detective's vehicle for several days (days when the detective was working yet choosing not to  
5 transport the evidence to the county's controlled environment). RP 323, 325, 326, 329. *See*  
6 *also*, Exhibit 1, *Declaration of Robert Freeman*. Specifically, the collection and storage  
7 timeline included the following: the evidence was collected on October 5, 2001, spent  
8 several days in the detective's trunk, was moved to her office, and finally transported to an  
9 evidence locker on October 16, 2001. RP 329-331. This evidence was not submitted to the  
10 laboratory for testing for another six months, on April 17, 2002. RP 331.

11 This court should be mindful of the following additional facts regarding the DNA  
12 evidence: There was a lack of testimony as to the total duration the carpet samples were  
13 soiled prior to cutting and collecting. However, as previously mentioned, the record is clear  
14 that these samples were shown to a different sheriff's officer on an earlier occasion. *See*,  
15 *Declaration of Lance Hester*, Michaels report (Ex. 2A), *supra*. Additionally, Virginia  
16 Freeman testified she vacuumed. RP 259. She testified first becoming aware of the soiled  
17 carpet in Amie's bedroom because she stepped in it while it was wet. RP 111. As  
18 previously mentioned, for comparison purposes, DNA was collected from Mr. Freeman,  
19 Virginia Freeman, and Amie Freeman. RP 348-350. But, rather than calling on the  
20 expertise of a forensic technician, Detective Dahlin took it upon herself to have the above-  
21 named individuals swab their oral cavities using long cotton swabs and drop them into petri  
22 dishes. *Id.* Interestingly, and in stark contrast to Dahlin's recklessly untrained DNA  
23 collection and storage practices, during trial the state documented the DNA samples were, at  
24 the time of trial, in a refrigerated area in the evidence room, and the state was reluctant to in  
25 any way retrieve and potentially disturb the samples at that time. RP 220.

In Washington the *Frye* standard must be met for scientific evidence to be  
admissible. *Frye v. United States*, 293 F. 1034 (D.C. Cir. 1923). The "general acceptance"

1 test looks to the scientific community to determine whether the evidence in question has a  
2 valid, scientific basis. *State v. Cauthron*, 120 Wn.2d 879, 887, 846 P.2d 502 (1993). If there  
3 is a significant dispute among experts in the relevant scientific community as to the validity  
4 of the scientific evidence, it is not admissible. *Id.*

5 The gathering, handling, transporting and storing of DNA evidence in this case fell  
6 far below the minimal standards expected for assuring integrity of evidence. *See* Exhibit 3,  
7 Declaration of Suzanna Ryan. Because of these foundational failures, the DNA testing  
8 results testimony should not have been admitted at trial. As such, it is appropriate for the trial  
9 court to examine the case in the context of CrR 8.3 and under the authority of the historic  
10 Writ of Coram Nobis, and to dismiss the state's prosecution that has resulted in Mr.  
11 Freeman's prolonged incarceration.

12 Specifically, defense counsel failed to request a *Frye* hearing addressing whether  
13 scientific standards were met regarding DNA collection, handling, transport, and storage.  
14 Counsel's failure resulted in scientist Beverly Himick's testimony that the DNA collected  
15 from the alleged victim's room was a match. This evidence was heavily relied on by the  
16 state for achieving the conviction. The evidence would have been excluded for lack of  
17 foundation had counsel requested and had the court granted a hearing under *Frye*.

18 The proper relief under CrR 8.3 and the Writ of Coram Nobis is dismissal. If the  
19 court finds in the alternative DNA retesting is the better remedy, Mr. Freeman requests  
20 testing under RCW 10.73.170.  
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**ARGUMENT:**

**I. Establishing Trial Court Jurisdiction**

**a. The Trial Court Has Jurisdiction to Review Freeman's Case Under RAP 7.2(e), CrR 8.3(b) and Writ of Coram Nobis**

The trial court is the best forum for the relief Mr. Freeman seeks.<sup>5</sup> He thus requests relief under CrR 8.3(b) and under the additional authority appearing to be authorized under the Writ of Coram Nobis. Requesting trial court review does not conflict with appellate court jurisdiction. *See* RAP 7.2(e)<sup>6</sup>.

CrR 8.3(b) provides the following:

[t]he court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

CrR 8.3.

Under CrR 8.3(b) Mr. Freeman must show arbitrary action or governmental misconduct and actual prejudice affecting his right to a fair trial. *State v. Rohrich*, 149 Wn.2d 647, 654-58, 71 P.3d 638 (2003), (*citing State v. Baker*, 78 Wn.2d 327, 332-33, 474 P.2d 254 (1970)), *State v. Wilson*, 149 Wn.2d 1, 9, 65 P.3d 657 (2003). This must be shown

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<sup>5</sup> Freeman has previously filed for post-conviction relief, including a motion for a new trial, direct appeal, petition for review to the Washington Supreme Court, Personal Restraint Petition, federal habeas corpus relief, and 9<sup>th</sup> Circuit and US Supreme Court review of the relief denied upon federal habeas corpus review. However, the issue presented in this motion was not addressed by the courts during the variety of layers of review. The trial court is in the best position to preside over this issue, under CrR 8.3.

<sup>6</sup> RAP 7.2(e) in relevant part reads as follows: (e) Postjudgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion. The decision granting or denying a postjudgment motion may be subject to review. Except as provided in rule 2.4, a party may only obtain review of the decision on the postjudgment motion by initiating a separate review in the manner and within the time provided by these rules. If review of a postjudgment motion is accepted while the appellate court is reviewing

1 by a preponderance of the evidence. *Rohrich*, at 654-58.

2 In *Rohrich*, *supra*, the court outlined the task that is now before the trial court in  
3 Freeman's case as follows:

4 In light of the prior case law and the 1995 amendment, this  
5 court has determined that a trial court may not dismiss charges  
6 under CrR 8.3(b) unless the defendant shows by a  
7 preponderance of the evidence (1) "arbitrary action or  
8 governmental misconduct" and (2) "prejudice affecting the  
9 defendant's right to a fair trial." *Michielli*, 132 Wash.2d at 239-  
40, 937 P.2d 587; *see State v. Starrish*, 86 Wash.2d 200, 205,  
544 P.2d 1 (1975) (acknowledging "that CrR 8.3(b) is designed  
to protect against arbitrary action or governmental  
misconduct").

10 When reviewing a trial court's dismissal of charges under CrR  
11 8.3(b), appellate courts must ask whether the trial court's  
12 conclusion that both elements were satisfied was a "manifest  
13 abuse of discretion." *Michielli*, 132 Wash.2d at 240, 937 P.2d  
14 587. The reviewing court will find an abuse of discretion  
15 "when the trial court's decision is manifestly unreasonable, or  
16 is exercised on untenable grounds, or for untenable reasons."  
17 *State v. Blackwell*, 120 Wash.2d 822, 830, 845 P.2d 1017  
18 (1993); *Michielli*, 132 Wash.2d at 240, 937 P.2d 587. A  
19 decision is based "on untenable grounds" or made "for  
20 untenable reasons" if it rests on facts unsupported in the record  
21 or was reached by applying the wrong legal standard. *State v.*  
22 *Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995). A  
23 decision is "manifestly unreasonable" if the court, despite  
24 applying the correct legal standard to the supported facts,  
25 adopts a view "that no reasonable person would take," *State v.*  
*Lewis*, 115 Wash.2d 294, 298-99, 797 P.2d 1141 (1990), and  
arrives at a decision "outside the range of acceptable choices."  
*Rundquist*, 79 Wash.App. at 793, 905 P.2d 922. However, as  
we explained in *Michielli*, "[e]ven if the trial court based its  
dismissal of the charges on ... inappropriate grounds," thus  
abusing its discretion, the appellate court may yet "affirm the  
lower court's judgment on any ground within the pleadings and  
proof": "If we find Defendant raised and proved sufficient  
grounds for a CrR 8.3(b) dismissal, we must then affirm the  
trial court's dismissal of the charges." 132 Wash.2d at 242-43,  
937 P.2d 587.

another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in rule 3.3(b).

MOTION AND MEMORANDUM TO DISMISS - 14

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1 *Rohrich*, 149 Wn.2d at 653-54.

2 The misconduct does not need to amount to dishonest or evil misconduct; “simple  
3 mismanagement” is sufficient. *State v. Michielli*, 132 Wn.2d 229, 239-40, 937 P.2d 587  
4 (1997) (citing *State v. Blackwell*, 120 Wn.2d 822, 831, 845 P.2d 1017 (1993)).

5 As shown below, mismanagement and misconduct in this case rises to the standard of  
6 materially prejudicing Mr. Freeman’s rights. *State v. Moen*, 150 Wn.2d 221, 226, 76 P.3d  
7 721 (2003). Dismissal under CrR 8.3(b) is indeed an extraordinary remedy. *Id.* However, it  
8 is appropriate in truly egregious cases such as Mr. Freeman's. As shown below, the  
9 introduction of certain evidence in the 2003 trial against Mr. Freeman amounted to  
10 governmental misconduct; the DNA evidence was introduced in the most unconventional of  
11 ways, and, as such, on review should be seen as mismanagement. Despite an early objection  
12 the deputy prosecuting attorney was allowed to conditionally introduce and admit fragile  
13 DNA evidence - evidence whose integrity was seriously compromised, particularly during  
14 the collection and storage stages<sup>7</sup>.

14 **b. Writ of Coram Nobis in the Context of Freeman’s Case**

15 As documented below, and as supported by the Declaration of DNA expert Suzanna  
16 Ryan, the DNA collection, storage, and maintenance process was so far below acceptable  
17 standards that it never should have been presented in a court of law, much less admitted for a  
18 jury’s consideration. As shown throughout the rest of this briefing, Mr. Freeman now  
19 submits this issue to constitute an extreme irregularity in the proceedings and it caused the  
20 jury to render a verdict based substantially upon the DNA evidence. Because of this  
21 irregularity, for the reasons addressed below, the court should dismiss under CrR 8.3(b)  
22 and/or the Writ of Coram Nobis.

23 Addressing the trial court for relief under CrR 8.3(b) is consistent with the long-held  
24 Writ of Coram Nobis. While court rules have become the customary route for pursuing

25 <sup>7</sup> Notably, DNA evidence was produced for the defense on the day of trial, leaving the defense without the  
ability to independently have the samples analyzed. Also notable was defense counsel’s failure to memorialize  
this issue in the trial record. *See* Declaration of Robert Freeman.

1 justice, this motion seeks relief under the writ as an alternative; and the court should view the  
2 writ a valid and useful writ under circumstances such as Mr. Freeman's. In *State v. Mason*,  
3 25 Wn.2d 767, 172 P.2d 707 (1946) the court, at the outset, stated, "... this court has  
4 impliedly recognized coram nobis as an available writ." *Id.* at 768. In *Mason*, the court  
5 noted the trial court acted upon the assumption that it had jurisdiction to issue the writ, then  
6 ruled. *Id.* The court's subsequent analysis presumed the same. *Id.* (See also *State v. Hensley*,  
7 27 Wn.2d 938, 939 (1947) wherein the court assumes the writ of coram nobis may issue in  
8 Washington State. *cf.* *State v. Stiltner*, 61 Wn.2d 102, 377 P.2d 252 (1962), noting in the  
9 opinion's only footnote that the trial court had previously addressed an issue upon  
10 defendant's petition for a writ of coram nobis, which the trial court treated as a petition for a  
11 writ of habeas corpus.) Obviously, in this case, Freeman asks the court to recognize the writ  
12 in state court.

13 It is important for the trial court to preserve its authority to review some matters post-  
14 conviction, and the writ of coram nobis accordingly preserves such authority. In the federal  
15 context, the writ remains an important valid process for trial court action. In the federal  
16 context, the writ of coram nobis derives its power from the Federal All Writs Act, 28 USC §  
17 1651(a) ("The Supreme Court and all courts established by Act of Congress may issue all  
18 writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the  
19 usages and principles of law.") This section originated in the Judiciary Act of 1789, and in  
20 the federal context Coram Nobis has also been continuously available in the U.S. District  
21 Court in Washington State. Most notably, in *Hirabayashi v. U.S.*, 828 F.2d 591 (C.A.9  
22 (WASH) 1987), Japanese Americans moved through a Writ of Coram Nobis to vacate their  
23 1947 convictions for violating wartime measures, requiring them to remain within residences  
24 and to report to civilian control stations. *Id.* at 593 ("Petitioner filed this lawsuit in 1983 to  
25 obtain a writ of error coram nobis to vacate his convictions and thus to make the judgments  
of the courts conform to the judgments of history.") The court granted the writ and vacated  
their judgments that occurred under federal court jurisdiction within Washington.

1 Hirabayashi articulated a four-part test for granting Coram Nobis relief:  
2 “(1) a more usual remedy [must] not [be] available; (2) valid reasons exist for not attacking  
3 the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy  
4 the case or controversy requirement of Art. III; and (4) the error is of the most fundamental  
5 character.” *Hirabayashi, Id.* at 604. *U.S. v. Dellinger*, 657 F.2d 140 (C.A.7(111)), reflected  
6 in its holding that, “since coram nobis review is available at any time after entry of final  
7 judgment in criminal proceedings, there remain cases where the Writ of Coram Nobis offers  
8 a unique possibility of relief.” *U.S. v. Dellinger*, at 144.

9 Similar to CrR 8.3, the Writ of Coram Nobis may be used to correct errors of either  
10 law or fact, but only in extraordinarily exceptional circumstances, such as the prosecution  
11 against Mr. Freeman, where relief is required to “correct errors ‘of the most fundamental  
12 character’.” *United States v. Osser*, 864 F.2d 1056, 1059 (3d Cir. 1988), *quoting Morgan*,  
13 346 U.S. at 512; *see also United States v. Keane*, 852 F.2d 199, 202-203 (7th Cir. 1988)  
14 (setting forth history of the writ and stringent limitations on its proper use.)

15 Another factor making coram nobis relief available, of course, is the error(s) or  
16 injustice that the petitioner contends makes the conviction unlawful. Coram nobis relief is  
17 appropriate only for “fundamental” errors. *See e.g., Morgan*, 346 U.S. at 512-13.

18 *Morgan* held that coram nobis relief was even available to challenge the validity of a  
19 judgment of conviction and a term of imprisonment even though the sentence had been fully  
20 served. (*See also Moon v. U.S.*, 272 F.2d 530 (D.C. Circ. 1959) for the proposition that  
21 Coram Nobis can also support invoking review of a sentence which a petitioner has not yet  
22 started to serve). *Morgan* cautioned as follows,

23 Continuation of litigation after final judgment and exhaustion  
24 or waiver of any statutory right of review should be allowed  
25 through this extraordinary remedy only under circumstances  
compelling such action not achieve justice.

346 U.S. at 511, 74 S.Ct. at 252.

In *U.S. v. Dellinger*, 657 F.2d 140 (1981), the Court specified the importance of the

1 Writ of Coram Nobis when a different result would have occurred had an error of fact been  
2 known to the trial court. The Court indicated,

3 The limitation of *coram nobis* relief to errors “of the most  
4 fundamental character,” *United States v. Morgan, supra*, 346  
5 U.S. at 512, 74 S.Ct. at 253, has been sensibly interpreted to  
6 mean, at a minimum, that such relief is not to be granted “unless  
7 it is probable that a different result would have occurred had the  
8 supposed error of fact been known to the trial court.” *Bateman*  
9 *v. United States*, 277 F.2d 65, 68 (8th Cir. 1960).

10 *Id.* at 145, FN9.

11 Important to Freeman’s claims in this court is the fact that the *Dellinger* court held  
12 that when the pleading is specifically titled “Writ of Coram Nobis” the Court that rendered  
13 the judgment must hear and decide the writ. Freeman asks this court for the same application  
14 of the writ in state court, i.e. for the trial court to find King County Superior Court the  
15 appropriate court to entertain Freeman’s request for relief.

16 In short, the horrific handling of the forensic DNA issues in Freeman’s case warrants  
17 employing the extraordinary review empowered through a Writ of Coram Nobis. The errors  
18 involved in DNA handling related to Freeman’s case are further addressed below.

19 As noted above, Freeman’s case must be scrutinized first under Hirabayashi’s four-  
20 part Coram Nobis test. *See, infra*. Addressing the first element, since the entry of judgment,  
21 Mr. Freeman has relentlessly sought appellate relief, including petitioning the state supreme  
22 court for review, and he sought habeas relief. His state court attempts at achieving justice  
23 included the filing of a PRP, motions for discretionary review to the state supreme court as  
24 well. And finally, he has previously attempted seeking relief from the trial court on a post-  
25 trial motion regarding his public trial right (whose ruling was appealed, and Division I  
converted it to a PRP and denied relief.) During one of his appeals, his attorney touched on  
the issue of his trial counsel’s ineffectiveness. But, in the context of the admissibility of the  
DNA, the only place that is currently appropriate for reviewing Mr. Freeman’s case is the  
trial court. That is because no court, including the trial court, has yet scrutinized whether the

1 DNA evidence admitted during the prosecution met the forensic standards that are now  
2 known to be universally applicable for admitting such evidence.

3 The simple and valid reason for not attacking the conviction at one of the previous  
4 appellate opportunities relates to the timing of the universal acceptance of forensic standards.  
5 King County Sheriff's standards appear to have been adopted in 2010<sup>8</sup>. As mentioned, The  
6 National Research Council's standard were published in 2009, several years after Mr.  
7 Freeman's conviction. And the standards were not relevant to his prior attempts at appellate  
8 review because they were not part of the record. The issue is now ripe as forensic standards  
9 have been accepted by both the National Research Council and the American Bar  
10 Association and adopted by the King County Sheriff's Office. As discussed herein, the DNA  
11 evidence admitted and used to convict Mr. Freeman fell far short of the now-accepted  
12 standards and it is critical the court now review this issue.

13 A case in controversy exists under Article III. This is a "(1) a more usual remedy  
14 [must] not [be] available; (2) valid reasons exist for not attacking the conviction earlier; (3)  
15 adverse consequences exist from the conviction sufficient to satisfy the case or controversy  
16 requirement of Art. III; and (4) the error is of the most fundamental character." *Hirabayashi*,  
17 *Id.* at 604. *U.S. v. Dellinger*, 657 F.2d 140 (C.A.7(111))

21 <sup>8</sup>King County Sheriff's standards related to biological fluids, 8.01.020 reads as follows:  
22 "BIOLOGICAL FLUIDS AND STAINS AND CELLULAR MATERIAL: 02/10

23 Forensic biochemical and DNA analyses are frequently of value in investigations, particularly those involving  
24 violent crimes. The recognition and recovery of such evidence must be performed properly by deputies and  
25 investigators. Deputies and investigators shall treat all blood and bloodstained objects as sources of bloodborne  
pathogens and take appropriate protective actions when processing a crime scene.

1. Precautions: a. The handling of biological fluids and stains present a hazard due to possible presence of  
bloodborne pathogens. v Refer to GOM 10.00.000, Exposure Control Plan. b. Protective gloves shall be worn to  
protect the hands. c. Pointed and sharp edged objects shall be handled with extreme care. d. Blind searches shall  
be avoided. v Searchers shall not place their hands into any space that is not first visually inspected. e. Shoes  
should be protected from blood on the floor or ground. f. Good hygiene should be observed. v Hands should be  
washed thoroughly after the removal of protective gloves."

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**II. Facts from Freeman's case justifying relief**

**a. Freeman's conviction was largely based on inadmissible forensic DNA evidence.**

The state put a great deal of emphasis on the DNA evidence used in its prosecution of Mr. Freeman. Detective Dahlin and forensic scientist Himick were questioned at length about the DNA collection, storage, and analysis. At closing, the state emphasized its reliance on the DNA evidence, arguing for what amounts to several pages of transcript the significance of collected DNA and its locations, processing, and analysis. *See* RP 806-808, 815-818. In other words, because of the state's reliance on purported DNA evidence, Mr. Freeman was convicted at trial.

**1. Standards for admitting forensic DNA evidence**

For years, Washington State, as well as many other jurisdictions throughout the country, attempted dispensing justice without today's clearer standards for the admissibility of forensic evidence. Mr. Freeman's case is illustrative of this historic problem - that is, the state's DNA evidence against Mr. Freeman was admitted without testimony showing its collection, storage, and analysis met particular forensic scientific standards. (The trial court record on these matters is cited at length in the previous section of this memorandum outlining the evidence.)

It has long been the view of commentators of DNA evidence in criminal cases that,

The court and the jury should have no reason to doubt the accuracy of the processing of information. Laboratories and experts have a particular responsibility to ensure that they are open and candid with the courts. Any reservations about inadequacies or errors should be promptly revealed, and failure to do that should be dealt with seriously. The court should not hesitate to exercise contempt powers and exclude experts who have misled deliberately in the past.

*DNA Technology in Forensic Science*, National Research Council, Committee on DNA



1 Technology in Forensic Science, National Academy Press, 1992, p. 148.

2 In Washington, the *Frye* standard prevails when analyzing the admissibility of  
3 scientific evidence. (In 1993 the Supreme Court's *Daubert* opinion became an important  
4 case instructive on the admissibility of scientific evidence. *Daubert v. Merrell Dow*  
5 *Pharmaceuticals*, 509 US 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)). Yet, Washington  
6 remains a *Frye* jurisdiction.

7  
8 Since the late 1980s, DNA has gained acceptance as expert subject matter in  
9 courtroom testimony. In 1992, the National Research Council published its first set of  
10 standards expected of DNA laboratories. Congress took interest in DNA and passed the  
11 DNA Identification Act in 1994. *Strengthening Forensic Science in the United States, A*  
12 *Path Forward*, National Research Council, 2009, p. 197. Following significant government  
13 funded research at the NIH, and other agencies, and work by progressive and influential  
14 scientists, the National Academy of Sciences issued recommendations on handling DNA  
15 forensic science in 1996. *Id.* 200-201. Proclaiming a "match" became less subjective and  
16 quality assurance and quality control protocols were published with the aim of improving  
17 laboratory work. *Id.* at 200. cf. By the mid-1990s, the FBI Quality Assurance Standards  
18 were the applicable standard, and existed to ensure compliance. Labs are subject to strict  
19 auditing intervals and quality-assurance standards, and lack of compliance results in  
20 excluding lab reporting from CODIS. *Id.* at 197. In short, government and independent labs  
21 must maintain certification with the FBI for the evidence they process to arise to acceptable  
22 scientific standards, and for the labs to have access to the FBI's national database of DNA  
23 profile. *Id.*  
24  
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1 Washington appellate courts have historically scrutinized trial court DNA evidence  
2 under *Frye*, as opposed to *Daubert, infra*. In *State v. Baity*, 140 Wn.2d 1, 991 P.2d 1151  
3 (2000), the court referenced the following related to scientific testimony in Washington:

4 Washington has adopted the *Frye* test for determining if  
5 evidence based on novel scientific procedures is admissible.  
6 *Copeland*, 130 Wash.2d at 255, 922 P.2d 1304; *see also State*  
7 *v. Woo*, 84 Wash.2d 472, 527 P.2d 271 (1974).

8 The test states: "evidence deriving from a scientific theory or  
9 principle is admissible only if that theory or principle has  
10 achieved general acceptance in the relevant scientific  
11 community." *State v. Martin*, 101 Wash.2d 713, 719, 684 P.2d  
12 651 (1984). [9] We determine if evidence meets *Frye* from a  
13 number of sources. *See Cauthron*, 120 Wash.2d at 888, 846  
14 P.2d 502 (examining the record, available literature, and the  
15 cases of other jurisdictions in determining a particular type of  
16 deoxyribonucleic acid (DNA) testing was admissible).  
17 However, evidence that does not involve new methods of proof  
18 or new scientific principles is not subject to the *Frye* test. *See*  
19 *Ortiz*, 119 Wash.2d at 310-11, 831 P.2d 1060. Once the *Frye*  
20 standard is met, the evidence must still satisfy the two-part  
21 inquiry under ER 702--whether the witness qualifies as an  
22 expert, and whether the testimony would be helpful to the trier  
23 of fact. *See Cauthron*, 120 Wash.2d at 889-90, 846 P.2d 502.

24 In applying the foregoing analysis, Washington courts have held  
25 certain evidence was not subject to *Frye* because it was not  
novel scientific evidence. Compare *Cauthron*, 120 Wash.2d at  
899, 846 P.2d 502 (DNA typing is subject to *Frye* because of  
the complexity of the DNA process) and *Woo*, 84 Wash.2d at  
473-75, 527 P.2d 271 (explicitly adopting *Frye* for determining  
the admissibility of polygraph examinations) with *State v.*  
*Noltie*, 57 Wash.App. 21, 29-30, 786 P.2d 332 (1990) (holding  
*Frye* does not apply to colposcopic evidence because it is in  
general use in the medical community and is no more "novel"  
than binoculars or a weak microscope, even though its use in  
child abuse cases was relatively recent), *aff'd*, 116 Wash.2d 831,  
809 P.2d 190 (1991), and *State v. Hettich*, 70 Wash.App. 586,  
591 n. 3, 854 P.2d 1112 (1993) (doubting the *Frye* standard  
would apply because the witness' testimony was not based on  
novel scientific experimental procedures, "but rather upon his  
own practical experience and acquired knowledge." (quoting

1                    *Ortiz*, 119 Wash.2d at 311, 831 P.2d 1060)), *review denied*, 123  
2                    Wash.2d 1002, 868 P.2d 871 (1994).

3                    *State v. Baity*, 140 Wn.2d at 10-11.

4                    Under *State v. Cauthron*, 120 Wash.2d 879, 899, 846 P.2d 502, DNA typing is  
5                    subject to *Frye* because of the complexity of the DNA process. Once the *Frye* standard is  
6                    met, the evidence must still satisfy the two-part inquiry under ER 702--whether the witness  
7                    qualifies as an expert, and whether the testimony would be helpful to the trier of fact. *See*  
8                    *Cauthron*, 120 Wash.2d at 889-90, 846 P.2d 502. *State v. Baity*, 140 Wn.2d 1, 991 P.2d  
9                    1151, (2000).

10                    In the prosecution of Mr. Freeman, neither of the steps were taken. Defense counsel  
11                    failed to request a hearing under *Frye*. DNA evidence was initially conditionally admitted.  
12                    RP 338. That is, the court admitted the evidence but did not allow it to be shown to the jury  
13                    until "all the conditions" were met. RP 338. However, at a pivotal point in the trial, defense  
14                    counsel conceded admission, despite the absence of a hearing under *Frye* and without the  
15                    advantage of a record of the two-part inquiry under ER 702.

16                    This was a significant failure at the trial court level. (*See* argument regarding  
17                    ineffective assistance of counsel below.)

18  
19                    **2. Failure of forensic DNA evidence to meet admissibility**  
20                    **standards in Freeman's case.**

21                    Forensic standards govern the areas in which the forensic DNA evidence was  
22                    mishandled in the following areas related to Freeman's case: gathering the DNA, storing the  
23                    DNA, and testing the DNA. A look at the materiality of these deficiencies follows.

1 (A) The collection of DNA evidence fell below the  
2 basic forensic standards expected in the prosecution  
3 of Mr. Freeman.

4 The first failure related to the collection of the fragile DNA evidence. Officer  
5 Michaels was the first law enforcement officer to respond to Virginia Freeman's complaint  
6 about her daughter. Regarding an unrelated matter, police were called to the Freeman home  
7 on September 17, 2001. RP 137-38. During this call out, Virginia Freeman reported an  
8 unrelated assault between her and Mr. Freeman. *Id.* During the police contact at the home,  
9 Ms. Freeman reported to Officer Michaels the complaint of the instant case alleging Mr.  
10 Freeman had inappropriate sexual contact with Amie Freeman. RP 140-41. Michaels  
11 showed-up to the Freeman home and filed a written police report, summarizing information  
12 told to him by Virginia and Amie Freeman. *See Exhibit 2, Declaration of Lance Hester,*  
13 including Michaels' report (Ex 2A) excerpt, RP 140-41, 314, (RP 2/24/03) 44. Michaels  
14 reported during the September 17, 2017 visit, Virginia and Amie Freeman told Office  
15 Michaels about times over the years when the carpet in Amie's room would have wet spots,  
16 and of a teddy-bear with suspicious staining, and Amie's diary. *Id.* (Exhibit 2A). However,  
17 despite hearing this claim, Officer Michaels collected nothing. But several days later, rather  
18 than a forensic technician, a detective and lay witness/mother of the alleged victim, teamed  
19 up participating in collecting the evidence. Virginia Freeman, the accuser's mother, testified  
20 to meeting Detective Dahlin in her home and pointing out stained areas on the carpet in the  
21 accuser, Amie Freeman's, bedroom. RP 320-322. Dahlin then proceeded to photograph the  
22 home, including the purported stains. And finally, after Virginia pointed out carpet stains,  
23 Dahlin "clipped out the stains in the carpet, as well as a portion of the contribution sample  
24 carpet." RP 323, 360. Detective Dahlin provided no evidence of having so much as utilized  
25

1 gloves or sanitized scissors before making the VED 11, 12, and 13 (11 and 12 being stains,  
2 and 13 being a "control sample"). RP 327. In fact, she admitted she is not a DNA expert.  
3 RP 361. And early in her testimony, when addressing her background and training, no  
4 mention of DNA handling or any such qualifications were mentioned. RP 311-314. She also  
5 collected a teddy bear that Virginia Freeman handed her that was believed to have suspicious  
6 stains on it as well, marking it 14. RP 327, 361. This was collected following knowledge  
7 imparted by Virginia Freeman, admitting to having personally collected the bear and  
8 subsequently she placed it into a backpack for a period of months for storage.  
9

10 Scientific and forensic authority on this subject is clear.

11 To produce biological evidence that is admissible in court in  
12 criminal cases, forensic investigators must be well trained in  
13 the collection and handling of biological samples for DNA  
14 analysis. They should take care to minimize the risk of  
15 contamination and ensure that possible sources of DNA are  
16 well preserved and properly identified. As in any forensic  
17 work, they must attend to the essentials of preserving  
18 specimens, labeling, and the chain of custody and must observe  
19 constitutional and statutory requirements that regulate the  
20 collection and handling of samples.

21 ...

22 The adequacy of the method used to acquire and analyze  
23 samples in a given case bears on the admissibility of the  
24 evidence and should, unless stipulated by opposing parties, be  
25 adjudicated case by case.

*DNA Technology in Forensic Science, National Research Council 20, 23 (1992).*

22 Following decades of inconsistent and unclear standards in forensic science, the  
23 scientific community and the legal community have developed standards for forensic science  
24 in criminal justice. The American Bar Association has published standards specifically  
25 related to DNA evidence. *See ABA Standards of Criminal Justice, Third Edition: DNA*

1 *Evidence*. 2007, American Bar Association publishing. Within the ABA's published  
2 Standards, the following is pertinent to the analysis in this case:

3 STANDARD 16-2.1 COLLECTING DNA EVIDENCE FROM  
4 A CRIME SCENE OR OTHER LOCATION

- 5 (a) Whenever a serious crime appears to have been committed and  
6 there is reason to believe that DNA evidence relevant to the  
7 crime may be present at the crime scene or other location, that  
8 evidence should be collected promptly.
- 9 (b) Whenever DNA evidence is to be collected by law  
10 enforcement, a law enforcement officer or other official  
11 forensic investigator properly trained in the identification,  
12 collection, and preservation of DNA evidence should be  
13 dispatched to the location and, following written guidelines,  
14 should identify, collect, and preserve that evidence, taking  
15 reasonable care to ensure that the collection is representative of  
16 all relevant DNA evidence present; and
- 17 (c) If a defendant has been charged with the crime under  
18 investigation and the defendant's attorney or investigator is  
19 denied access to a crime scene or other location after  
20 completion of law enforcement's investigation at the scene or  
21 location, the defendant should be permitted to seek a court  
22 order to allow the defendant's attorney or investigator  
23 reasonable access to the location and permit a representative of  
24 the defendant's attorney properly trained in the identification,  
25 collection, and preservation of DNA evidence to collect DNA  
evidence.

*Id.* at 33.

The commentary to the same authority, indicates the following:

"Finding biological evidence and then properly collecting and preserving it are the  
critical first steps in the use of DNA profiling." *Id.* Regarding 16-2.1(b) specifically, the  
following commentary is instructive: "...the power of DNA evidence will be undercut if it is  
not collected properly." *Id.* at 34. It further specifies, "Three important requirements appear  
in the Standard. First, persons collecting the evidence need to be properly trained. Second,

1 since all evidence cannot be collected, a representative sample of the evidence should be.  
2 Third, collection should be accomplished pursuant to written guidelines.” *Id.* at 35.

3 Consistent with the above standards, and relevant to Mr. Freeman’s case, the King  
4 County Sheriff’s Department have written standards for collecting evidence. Within the  
5 sheriff’s office manual, is section 8.01.020, BIOLOGICAL FLUIDS AND STAINS AND  
6 CELLULAR MATERIAL: 02/10 (excerpted pages attached as Exhibit B to Exhibit 2C,  
7 Declaration of Lance Hester). The first requirement for collecting such evidence relevant to  
8 Mr. Freeman’s case is found in section 4.c. “Do not use plastic bags or containers.” The rest  
9 of the requirements speak for themselves and the only conclusion that can be made related to  
10 the collection and storage of evidence in Freeman’s case is Detective Dahlin’s efforts failed  
11 in seemingly every way possible. (And at trial counsel failed to articulate objections to the  
12 DNA materials admissibility.)

14 Had the sheriff’s office complied with its own requirements, noted above, only then  
15 would it have potentially covered the next issue related to the American Bar Association’s  
16 Standards, STANDARD 16-2.5 MANNER OF COLLECTING AND PRESERVING DNA  
17 EVIDENCE. This standard is about ensuring integrity, availability for testing and retesting,  
18 packaging, and storage. It relies on protocol such as the King County Sheriff’s requirements.

20 DNA forensic scientist, Suzanna Ryan has reviewed the trial transcript, and, in  
21 support of this motion offers opinions based on the following three critical areas: evidence  
22 issues, serology testing, and DNA testing. *See Exhibit 3, Declaration of Suzanna Ryan of*  
23 *Ryan DNA Forensic Science.* The defense defers to the attached Declaration, but, in short,  
24 offers that trial counsel was ill-equipped to cross examine the DNA testimony in all three  
25

1 areas noted by Ryan, and that the record is void of questioning or testimony that addresses  
2 the concerns Ms. Ryan expresses. (See later discussion on ineffective assistance of counsel.)

3 Consistent with the above concerns, there is no evidence that any measures were  
4 taken to preserve the integrity of the carpet stain evidence collected by Dahlin. After  
5 collecting the carpet, Dahlin placed them in the trunk of her car. RP 329. The samples  
6 stayed in her trunk for several days before Dahlin finally brought them into her office on  
7 October 11. RP 329, 331. They remained in her office until October 16, when Dahlin finally  
8 got around to packaging them and moving them into another storage facility. RP 331. It  
9 wasn't until 6 months later, on April 17, 2002, when Detective Dahlin finally requested the  
10 fragile DNA evidence be transported to the Crime Lab for analysis. RP 332, 354.

## 12 B. Ineffective assistance of trial counsel

### 13 1. Counsel's Failures

14 Notably, defense counsel failed to raise issues related to tainted DNA evidence.  
15 Initially, defense counsel objected to the completeness of the chain of custody related to  
16 Exhibits 17, 18, and 19. Ultimately, however, counsel essentially stipulated to their  
17 admissibility. RP 373-74. *cf.* 338 (admitted conditionally but not to be shown to the jury  
18 until chain of custody testimony completed).

19 Counsel cross-examined on a few issues related to the weight of the DNA evidence.  
20 However, he never requested a hearing under *Frye*, and he ultimately failed challenging the  
21 admissibility of the evidence based on the obvious chain of custody and substandard forensic  
22 attention.<sup>9</sup>

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<sup>9</sup> A hearing under *Frye* would have addressed Dahlin's collection technique, and that technique would have, obviously, failed the *Frye* testing.



1                                   **2.       Deficient representation and prejudice**

2                   A fine discussion of the court's job evaluating counsel's deficient performance is  
3 found within *In Re Personal Restraint Petition of Cecil Emile Davis*, 152 Wn.2d 647, 101  
4 P.3d 1 (2004). The court articulated the following:

5                                   Under the sixth amendment to the United States Constitution  
6 and article I, section 22 of the Washington State Constitution, a  
7 defendant is guaranteed the right to effective assistance of  
8 counsel in criminal proceedings. To successfully challenge the  
9 effective assistance of counsel, Petitioner must satisfy a two-  
10 part test. Petitioner must show that "(1) defense counsel's  
11 representation was deficient, i.e., it fell below an objective  
12 standard of reasonableness based on consideration of all the  
13 circumstances; and (2) defense counsel's deficient  
14 representation prejudiced the defendant, i.e., there is a  
15 reasonable probability that, except for counsel's unprofessional  
16 errors, the result of the proceeding would have been different."  
17 The United States Supreme Court has defined reasonable  
18 probability as "a probability sufficient to undermine confidence  
19 in the outcome." A failure to establish either element of the test  
20 defeats the ineffective assistance of counsel claim.  
21 This court approaches an ineffective assistance of counsel  
22 argument with a strong presumption that counsel's  
23 representation was effective. Petitioner can "rebut this  
24 presumption by proving that his attorney's representation was  
25 unreasonable under prevailing professional norms and that the  
challenged action was not sound strategy." "The reasonableness  
of counsel's performance is to be evaluated from counsel's  
perspective at the time of the alleged error and in light of all the  
circumstances."

Although the requirement of an individualized inquiry into  
defense counsel's performance and resulting prejudice provides  
the general framework for analyzing an ineffective assistance of  
counsel claim, in certain limited cases prejudice will be  
presumed. In *United States v. Cronin* retained defense counsel  
withdrew shortly Before trial in a complex check kiting case.  
The court appointed a young lawyer with a real estate practice  
who had never participated in a jury trial to represent  
respondent, but allowed him only 25 days to prepare for trial,  
even though the government had taken over four and one-half  
years to investigate the case and had reviewed thousands of  
documents during that investigation. The Sixth Circuit Court of

1 Appeals reversed making a finding of presumed incompetence.  
2 The Supreme Court reversed the Court of Appeals and  
3 explicated the very limited circumstances where a court may  
4 presume prejudice.

4 This presumptive prejudice rule "is limited to the 'complete  
5 denial of counsel' and comparable circumstances, including:  
6 (1) where a defendant 'is denied counsel at a critical stage of  
7 his trial'; (2) where 'counsel entirely fails to subject the  
8 prosecution's case to meaningful adversarial testing'; (3) where  
9 the circumstances are such that 'the likelihood that any lawyer,  
10 even a fully competent one, could provide effective assistance  
11 is so small that a presumption of prejudice is appropriate  
12 without inquiry into actual conduct of the trial'; and (4) where  
13 'counsel labors under an actual conflict of interest.' "Apart from  
14 circumstances of this nature and magnitude, the Supreme Court  
15 has said "there is generally no basis for finding a Sixth  
16 Amendment violation unless the accused can show how  
17 specific errors of counsel undermined the reliability of the  
18 finding of guilt."

12 *Id.* 669-75(internal citations omitted).

13 In accordance with *Davis*, above, it is particularly crucial the court examine the  
14 existence of "presumed prejudice," as trial counsel "'(2) ... 'counsel entirely fails to subject  
15 the prosecution's case to meaningful adversarial testing.'" *Id.* (citing *Visciotti v. Woodford*,  
16 288 F.3d 1097, 1106 (9th Cir. 2002) (quoting *Cronic*, 466 U.S. at 659-61, 662 n. 31, 104  
17 S.Ct. 2039), rev'd on other grounds, 537 U.S. 19, 123 S.Ct. 357, 154 L.Ed.2d 279 (2002); see  
18 also *Bell v. Cone*, 535 U.S. 685, 122 S.Ct. 1843, 1850-51, 152 L.Ed.2d 914 (2002); *Smith v.*  
19 *Robbins*, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).) Near the outset of the state's  
20 presentation of DNA evidence, counsel for Freeman lodged a continuing objection to the  
21 admissibility of the DNA evidence in this case. Upon scrutiny, clearly there were substantial  
22 problems with the collection, storage, and lab evaluation of the DNA evidence (*See* Ryan  
23 Declaration and discussions above). Yet, defense counsel's examination of the relevant  
24 witnesses at trial extracted only the following relevant information:  
25

- 1
- That Detective Dahlin is by no means a DNA expert;
  - That defense counsel did not retain a defense DNA expert;
  - That counsel did not cross examine nor question in any way the substandard DNA collection technique that utilized collection techniques that violate department policy and scientific forensic standards;
  - That counsel did not cross examine nor question in any way the substandard storage technique and chain of custody problems that violated department policy and scientific forensic standards;
- 2  
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7 This is the equivalent of the *Davis* court's reference to *entirely failing to subject the*  
8 *prosecution's case to meaningful adversarial testing.*

9 Early in the trial the court noted the DNA testimony was conditionally admitted, and  
10 would only be fully admitted upon an adequate foundation and complete presentation of the  
11 DNA evidence. Defense counsel went along with this scheme. Then, ultimately it never  
12 lodged a final objection once the state had concluded its multi-faceted DNA presentation. In  
13 fact, defense counsel essentially stipulated to its admissibility. (*See* RP 373, wherein counsel  
14 stated, "I don't have any objection, Your Honor.")

15

16 **C. The evidence failed to attain the standards required under Frye, and  
17 mandatory forensic standards related to handling DNA**

18 As noted, Suzanna Ryan is an expert witness in the area of DNA forensic science.  
19 Her professional background, training and experience as a forensic scientist in the area of  
20 DNA is extensive. *See* attachment to Ryan Declaration, Ryan curriculum vitae. She is an  
21 expert in this subject matter as she has substantial scientific training and experience, and  
22 forensic testimony experience. *Id.*

23 Ryan has reviewed all records relevant to the issues argued herein. *See* Ryan  
24 Declaration.



1 one-sided presentation to the jury. Thus, it is appropriate for this court to go so far as to find  
2 “presumed prejudice.” This is the equivalent of the *Davis* court’s reference to *entirely failing*  
3 *to subject the prosecution’s case to meaningful adversarial testing.*

4 Under *Strickland v. Washington*, 466 U.S. 668 (1984), a convicted defendant's claim  
5 that counsel's assistance was so defective as to require reversal of a conviction or setting  
6 aside of a death sentence requires that the defendant show, first, that counsel's performance  
7 was deficient and, second, that the deficient performance prejudiced the defense so as to  
8 deprive the defendant of a fair trial. Pp. 466 U. S. 687-696. Mr. Freeman has made this  
9 showing.

### 11 **III. Prosecutorial Misconduct**

12 As the court is well-aware, a prosecutorial misconduct analysis can take a look at any  
13 part of the prosecution, including discovery. Due process requires disclosure of evidence  
14 favorable to defense that is material to guilt or punishment. *U.S. v. Bagley*, 473 US 667  
15 (1985), *Brady v. Maryland*, 373 US 83 (1963). In Washington, the discovery rule is broader  
16 and requires disclosure not only when the evidence negates guilt, but also when it *tends to*  
17 *negate* guilt. CrR 4.17(a)(3). Inherent in this type of due process analysis, the state must act  
18 with due diligence. *State v. Woods*, 143 Wn.2d 561 (2001). In the context of discovery  
19 duties, “state” encompasses all governmental agencies working at its direction. *Kyles v.*  
20 *Whitley*, 514 US 419 (1995). And, certainly relevant to the instant case against Mr. Freeman,  
21 the state cannot relieve itself of its duty to disclose based on the prosecutor’s personal  
22 ignorance of information. *State v. Wood*, 57 F.3d 733 (9<sup>th</sup> Cir. 1995). Late disclosure  
23 causing prejudice to rights of the accused which materially affect his right to a fair trial may  
24 constitute governmental misconduct and warrant dismissal. CrR 8.3(b), 4.7, *State v.*  
25

1 *Martinez*, 121 Wn.App. 21 (2004). A defendant is generally not required to waive one right  
2 to preserve another. A “Hobson’s choice” forced by government mismanagement may be  
3 grounds for dismissal under CrR 8.3(b). *State v. Michielli*, 132 Wn.2d 229 (1997), *State v.*  
4 *Price*, 94 Wn.2d 810 (1980). The appropriate and required remedy is dismissal of charges  
5 when defendant shows (1) government misconduct or mismanagement and (2) prejudice.  
6 Bad faith is not required to secure a dismissal. CrR 8.3(b), *State v. Michielli*, 132 Wn.2d 229  
7 (1997).

8  
9 The prosecution failed to timely make the DNA evidence available for the defense to  
10 analyze. *See* Declaration of Robert Freeman. In the context of prosecutorial misconduct  
11 body of law, the facts of this case unfolded in a way that now, with the benefit of seeing in  
12 hindsight what occurred, the trial court should exercise the authority it is granted under CrR  
13 8.3, find prejudicial misconduct occurred when the state offered the DNA evidence, and  
14 reverse Mr. Freeman’s conviction.

15 Upon review of Mr. Freeman’s trial, several significant issues stand out relevant to  
16 the DNA issues involved in this motion/writ. First, the state deprived the defense of a  
17 meaningful opportunity to review DNA evidence prior to trial. Significantly, the case was  
18 called to trial on March 18, 2003. Only three days before trial, the court ordered the state to  
19 produce the DNA evidence for the defense or else the matter would be dismissed. *See*  
20 Declaration of Robert Freeman. It was not until the start of trial that the state actually made  
21 it available for the defense to examine. *See* Declaration of Robert Freeman. Second, the  
22 defense failed to engage in any discovery whatsoever that would have addressed several  
23 significant issues regarding the integrity of the evidence. The defense did not retain an  
24 expert to independently scrutinize and potentially contest the state’s testimony regarding  
25

1 DNA. Had an expert been employed, and had an expert had time to evaluate the DNA  
2 evidence, Mr. Freeman would have had at his disposal two meaningful tools toward attacking  
3 the prosecution's case against him. First, his counsel would have had the advantage of  
4 education imparted by a DNA expert that could have been useful during cross examination of  
5 Beverly Himick, the state's DNA analyst and expert. Second, the defense could have offered  
6 its own DNA expert to address the significant problems in how the DNA was handled, and  
7 thus give scientific evidence of its own that would have caused a jury to question that which  
8 otherwise went unquestioned – the state's evidence.  
9

10 The injustices in this case are now obvious. The state turned over the DNA evidence  
11 so late that Freeman was deprived of an opportunity to obtain his own potential expert's  
12 review. Defense counsel was ill-prepared to attack the evidence on its own. And the jury,  
13 without meaningful contesting, was left with only one side to believe, the state's. This sort  
14 of injustice should cause the court to reverse Mr. Freeman's conviction.

#### 15 Additional Misconduct

16 The numbering of the carpet sample evidence is at best a mess. As indicated, the  
17 original numbering included samples "VED 1", "VED 2," and "VED 3." *See also*  
18 Declaration of Robert Freeman. By the time of trial, no such samples were logged in  
19 evidence inventory, yet their photos remain. *Id.* Rather, by the time of trial, Dahlin offered  
20 evidence of having collected VED 11, 12, and 13. This leaves significant question as to  
21 whether the original 1, 2, and 3 actually existed, as they were never presented at trial. And,  
22 in light of an absence of testimony about collecting 11, 12, and 13, leaves one wondering  
23 whether Dahlin or Virginia engaged in a subsequent search and evidence harvest session that  
24  
25

1 went undocumented and unreported. This is prejudicial to Mr. Freeman as in retrospect he  
2 and his counsel are completely unable to scrutinize the situation.

3 **IV. Request for DNA Testing as an Alternative Request for Relief**

4 On the eve of trial, the court ordered the state to finally turn over the DNA evidence  
5 in this case. *See* Declaration of Robert Freeman. Upon producing DNA evidence, the case  
6 began, leaving the defense with no time for independent analysis by an expert of its own.  
7 Interestingly, as the trial progressed, it became clear the DNA evidence offered and admitted  
8 at trial did not even appear to be the very evidence the state purports to have collected, as  
9 only photographs of evidentiary items identified as VED 1, 2, and 3 were admitted at trial.  
10 *See* Photograph of VED 1, 2, 3, as Trial Exhibit 12. In fact, at trial, the offered evidence bore  
11 reference to VED 11, 12, and 13, and was ultimately numbered as trial exhibits 16, 17, and  
12 18. *See* Defense closing at 819-819.

14 Because of these uncertainties and because the purported DNA evidence was  
15 collected, stored, and tested at a time and era when lots of problems are now known to have  
16 occurred, Freeman deserves to have the DNA submitted for testing and analysis. Also, in  
17 light of the state's closing argument purporting the jury had enough evidence with the DNA  
18 alone to convict, Freeman deserves to, for the first time, have the DNA separately tested.  
19 Accordingly, in the alternative to the above analysis under CrR 8,3 and Coram Nobis, the  
20 court should grant Mr. Freeman relief under RCW 10.73.170. That statute reads as follows:  
21

22 RCW 10.73.170 DNA testing requests.

23 (1) A person convicted of a felony in a Washington state  
24 court who currently is serving a term of imprisonment may  
25 submit to the court that entered the judgment of conviction  
a verified written motion requesting DNA testing, with a  
copy of the motion provided to the state office of public  
defense.



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(2) The motion shall:

(a) State that:

- (i) The court ruled that DNA testing did not meet acceptable scientific standards; or
- (ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or
- (iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;

(b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and

(c) Comply with all other procedural requirements established by court rule.

(3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

(4) Upon written request to the court that entered a judgment of conviction, a convicted person who demonstrates that he or she is indigent under RCW 10.101.010 may request appointment of counsel solely to prepare and present a motion under this section, and the court, in its discretion, may grant the request. Such motion for appointment of counsel shall comply with all procedural requirements established by court rule.

(5) DNA testing ordered under this section shall be performed by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(6) Notwithstanding any other provision of law, upon motion of defense counsel or the court's own motion, a sentencing court in a felony case may order the preservation of any biological material that has been secured in connection with a criminal case, or evidence samples sufficient for testing, in accordance with any court

1 rule adopted for the preservation of evidence. The court  
2 must specify the samples to be maintained and the length of  
time the samples must be preserved.

3 In accordance with the above, Mr. Freeman herein moves this court to order DNA  
4 testing. It is Freeman's position that nothing has been produced or offered by the state  
5 showing the actual items (VED 1, 2, 3) as having been tested. *See* Trial Exhibit 12, (three  
6 carpet samples with VED 1, 2, 3). The only such reference to VED 1, 2, and 3 was a  
7 photograph of these numbered samples. *Id.* Given technological advances, the DNA testing  
8 now requested would be significantly more accurate than prior DNA testing or would  
9 provide significant new information. In fact, if the court orders DNA testing for VED 1, 2,  
10 and 3 depicted in the photograph, it will for the first time know, without the detriment of an  
11 ambiguous record on the matter, the results of VED 1, 2, and 3. Some might argue testimony  
12 related to trial exhibits 16, 17, and 18 is the same as the above noted evidence. The trial  
13 record does not clarify this ambiguity. In addition to potentially and for the first time having  
14 the test results of VED 1, 2, and 3, and given the obviously improved quality of testing  
15 available today, more detail will be available showing the number of different DNA sources  
16 from the high travelled carpeted area depicted in the photograph showing VED 1, 2, and 3.  
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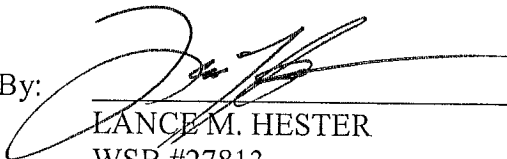
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CONCLUSION

As indicated herein, the court is asked to exercise its powers under CrR 8.3 and the writ of coram nobis, and upon so should reverse the verdict in the case against Mr. Freeman. In the alternative, the court is asked to order the relief authorized under RCW 10.73.170.

RESPECTFULLY Submitted this 28<sup>th</sup> day of September, 2018.

HESTER LAW GROUP, INC., P.S.  
Attorneys for Defendant

By:   
\_\_\_\_\_  
LANCE M. HESTER  
WSB #27813

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON, )  
 )  
Plaintiff, )  
 )  
ROBERT LEE FREEMAN, )  
 )  
Defendant. )

No. 02-1-01727-1 KNT  
DECLARATION OF  
ROBERT L. FREEMAN

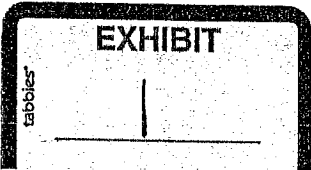
I, Robert Lee Freeman, hereby declare as follows:

I am the defendant who was prosecuted and convicted in the above captioned case. I was involved with my trial counsel while preparing my defense and have, on several occasions, reviewed the trial record and the discovery from this case.

I testified at trial and denied the allegations. To this day I continue to deny the allegations. I have submitted my case to the Court of Appeals directly and upon a PRP. I have petitioned the federal court for Habeas Corpus relief. And, on an earlier occasion, but on a different issue than addressed herein, I requested post-conviction relief from the trial court, Honorable McDermott.

The record shows the substandard handling of fragile forensic DNA evidence should require the trial court to review my matter one more time.

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18           I attempted to respond to her question to the best of my speculative memory, stating it  
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22 continue to trial.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

|                      |   |                      |
|----------------------|---|----------------------|
| STATE OF WASHINGTON, | ) |                      |
|                      | ) |                      |
| Plaintiff,           | ) | No. 02-1-01727-1 KNT |
|                      | ) |                      |
| ROBERT LEE FREEMAN,  | ) | DECLARATION OF       |
|                      | ) | ROBERT L. FREEMAN    |
| Defendant.           | ) |                      |
|                      | ) |                      |

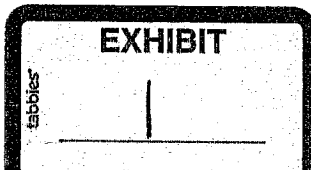
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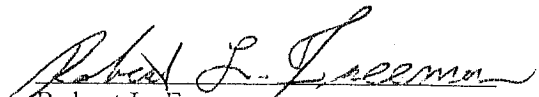
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I ask the court to dismiss my case as requested in the memorandum regarding CrR 8.3 and the Writ of Coram Nobis. In the alternative, I request the court to order new DNA testing.

I declare under penalty of perjury under the laws of the state of Washington that foregoing is true and correct.

DATED this 30<sup>th</sup> day of April, 2018 at Airway Heights, Washington.

  
Robert L. Freeman

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING AT KENT

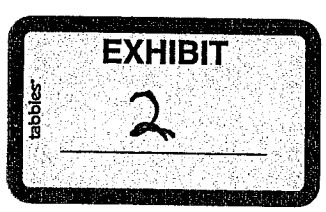
|                      |   |                      |
|----------------------|---|----------------------|
| STATE OF WASHINGTON, | ) |                      |
|                      | ) |                      |
| Plaintiff,           | ) | No. 02-1-01727-1 KNT |
|                      | ) |                      |
| vs.                  | ) | DECLARATION OF       |
|                      | ) | LANCE M. HESTER      |
| ROBERT LEE FREEMAN,  | ) |                      |
|                      | ) |                      |
| Defendant.           | ) |                      |
|                      | ) |                      |

I am the attorney for the defendant, Robert Freeman, representing him for the limited purpose of the motion to which this declaration is attached.

I am familiar with the trial and appellate materials from Mr. Freeman's case under the above cause number and all post disposition case numbers.

Attached hereto are materials supplementing those exhibits and references identified in the memorandum. These materials include the following:


- Exhibit 2A – Deputy Michaels Report;
- Exhibit 2B – Detective Dahlin Report, including evidence log; and
- Exhibit 2C – King County Sheriff's Manual, excerpt 8.01.020.



1 The redactions reflect that the material was obtained through public records requests.  
2 Exhibits 2A and 2B were part of the state's discovery in this court at the time of trial, but not  
3 admitted into evidence at trial.  
4

5 I declare under penalty of perjury under the laws of the State of Washington that the  
6 foregoing is true and correct.

7 DATED this 28<sup>th</sup> day of September, 2018 at Tacoma, Washington.

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LANCE M. HESTER



DO NOT DISCLOSE:



# King County Sheriff's Office

01-306500

Page 1

Domestic Violence:

## INCIDENT REPORT

148-E-0

District: F-7

|                      |             |               |                               |                        |       |                                      |
|----------------------|-------------|---------------|-------------------------------|------------------------|-------|--------------------------------------|
| Reported:<br>9/18/01 | DOW:<br>Tue | Time:<br>0:45 | Incident Type:<br>RAPE, CHILD | Initial FCR<br>148-E-0 | Court | Juvenile<br><input type="checkbox"/> |
|----------------------|-------------|---------------|-------------------------------|------------------------|-------|--------------------------------------|

|                        |             |       |                |             |       |                |
|------------------------|-------------|-------|----------------|-------------|-------|----------------|
| Occ Between:<br>1/1/90 | DOW:<br>Mon | Time: | And:<br>1/1/96 | DOW:<br>Mon | Time: | Location Name: |
|------------------------|-------------|-------|----------------|-------------|-------|----------------|

|                                     |                       |              |              |
|-------------------------------------|-----------------------|--------------|--------------|
| Incident Location:<br>220 244 AV SE | City:<br>MAPLE VALLEY | State:<br>WA | Zip<br>98038 |
|-------------------------------------|-----------------------|--------------|--------------|

### SUSPECTS/ARRESTED PERSONS SECTION

|                         |   |  |                                    |            |                |
|-------------------------|---|--|------------------------------------|------------|----------------|
| Association:<br>SUSPECT | Last, First Middle<br>FREEMAN, ROBERT LEE | Interpreter Needed<br><input type="checkbox"/> | Booked<br><input type="checkbox"/> | Citation # | Co-Defendant # |
|-------------------------|---|--|------------------------------------|------------|----------------|

|                           |                      |          |              |                                     |
|---------------------------|----------------------|----------|--------------|-------------------------------------|
| Address<br>220 244 AVE SE | City<br>MAPLE VALLEY | ST<br>WA | Zip<br>98038 | Phone Numbers:<br>Home 425/415-1971 |
|---------------------------|----------------------|----------|--------------|-------------------------------------|

|          |           |               |                  |               |             |               |             |             |
|----------|-----------|---------------|------------------|---------------|-------------|---------------|-------------|-------------|
| Sex<br>M | Race<br>W | DOB<br>3/2/64 | Height<br>5' 10" | Weight<br>175 | Hair<br>BRO | Glass'<br>Yes | Eyes<br>HAZ | Facial Hair |
|----------|-----------|---------------|------------------|---------------|-------------|---------------|-------------|-------------|

|                        |          |      |     |
|------------------------|----------|------|-----|
| Scars, Marks & Tattoos | Clothing | Gang | Set |
|------------------------|----------|------|-----|

|                       |                    |     |          |     |        |
|-----------------------|--------------------|-----|----------|-----|--------|
| Occupation<br>PAINTER | Employer<br>BOEING | OLN | ST<br>WA | SSN | AFIS#: |
|-----------------------|--------------------|-----|----------|-----|--------|

### VICTIMS, WITNESSES AND OTHER PERSONS SECTION

|                        |                    |  |                        |
|------------------------|--------------------|--|------------------------|
| Association:<br>VICTIM | Last, First Middle | Interpreter Needed<br><input type="checkbox"/> | Phone Numbers:<br>Home |
|------------------------|--------------------|--|------------------------|

|                          |                      |          |              |
|--------------------------|----------------------|----------|--------------|
| Address<br>220 244 AV SE | City<br>MAPLE VALLEY | ST<br>WA | Zip<br>98038 |
|--------------------------|----------------------|----------|--------------|

|          |           |                 |                 |               |             |        |             |             |
|----------|-----------|-----------------|-----------------|---------------|-------------|--------|-------------|-------------|
| Sex<br>F | Race<br>W | DOB<br>10/30/82 | Height<br>5' 2" | Weight<br>125 | Hair<br>BRO | Glass' | Eyes<br>BRO | Facial Hair |
|----------|-----------|-----------------|-----------------|---------------|-------------|--------|-------------|-------------|

|                        |          |      |     |
|------------------------|----------|------|-----|
| Scars, Marks & Tattoos | Clothing | Gang | Set |
|------------------------|----------|------|-----|

|                       |                                  |     |          |     |        |
|-----------------------|----------------------------------|-----|----------|-----|--------|
| Occupation<br>STUDENT | Employer<br>CENTRAL WASH. UNIVER | OLN | ST<br>WA | SSN | AFIS#: |
|-----------------------|----------------------------------|-----|----------|-----|--------|

### REVIEW

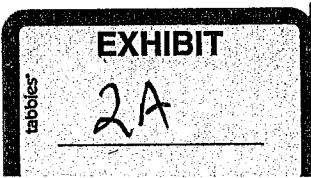
|                                      |  |                      |
|--------------------------------------|--|----------------------|
| Reporting Officer Serial #:<br>03940 | Reporting Officer Name:<br>Michels, William D. | Other Units Reports: |
|--------------------------------------|--|----------------------|

|                            |               |                     |
|----------------------------|---------------|---------------------|
| Date Submitted:<br>9/18/01 | CID Screener: | Status:<br>Approved |
|----------------------------|---------------|---------------------|

|                                      |                            |  |
|--------------------------------------|----------------------------|--|
| Date Time Reviewed:<br>9/18/01 23:27 | Date Assigned:<br>09-19-01 | Disposition:<br>INCIDENT REPORT ON SCENE - N |
|--------------------------------------|----------------------------|--|


|                                      |                       |  |
|--------------------------------------|-----------------------|--|
| Reviewed By: 01422<br>Rorvik, Mark D | Investigator Assigned | <input type="checkbox"/> Aid Req<br><input type="checkbox"/> Weapons<br><input type="checkbox"/> Injury<br><input type="checkbox"/> Alcohol<br><input type="checkbox"/> Compute<br><input type="checkbox"/> Dom Vio<br><input type="checkbox"/> Drug<br><input type="checkbox"/> Juvenile<br><input type="checkbox"/> Gang |
|--------------------------------------|-----------------------|--|

Printed by: Rorvik, Mark D On: Tuesday 09/18/01 23:27



INCIDENT REPORT

100080579

|   |      |  |           |   |
|---|------|--|-----------|---|
| DO NOT DISCLOSE: <input type="checkbox"/>   |      |  <b>King County Sheriff's Office</b><br><b>INCIDENT REPORT</b> | 01-306500 | Page 2                                      |
| Domestic Violence: <input type="checkbox"/> |      |  | 148-E-0   | District: F-7                               |
| Association: REPORTING PAR                  |      | Last, First Middle   |           | Interpreter Needed <input type="checkbox"/> |
| Address                                     |      | City   |           | ST  |
| 220 244 AVE SE                              |      | MAPLE VALLEY   |           | WA  |
|   |      |  |           | Zip   |
|   |      |  |           | 98038                                       |
| Sex   | Race | DOB  | Height    | Weight                                      |
| F   | W    | 10/4/60  | 5' 2"     | 135   |
|   |      |  |           | Hair  |
|   |      |  |           | BRO   |
|   |      |  |           | Glass'                                      |
|   |      |  |           | Eyes  |
|   |      |  |           | BRO   |
|   |      |  |           | Facial Hair                                 |
| Scars, Marks & Tattoos                      |      |  | Clothing  |   |
|   |      |  |           |   |
|   |      |  | Gang      |   |
|   |      |  | Set       |   |
|   |      |  |           |   |
| Occupation                                  |      | Employer   |           | OLN   |
| SALES                                       |      | ENVIROMENTAL CONTR   |           | WA  |
|   |      |  |           | SSN   |
|   |      |  |           | AFIS#:                                      |
| MO  |      |  |           |   |

Suspect Trademarks: **SEXUALLY ASSAULTED STEP DAUGHTER**

Instrument: **HANDS**

Entry Point: **N/A**

Entry Method: **N/A**

|  |                          |                          |                      |
|--|--------------------------|--------------------------|----------------------|
| Premises Type  | Locked                   | Occupied                 | Total Property Cost: |
| PRIVATE HOME   | <input type="checkbox"/> | <input type="checkbox"/> |                      |
| <input type="checkbox"/> Aid Req <input type="checkbox"/> Weapons <input type="checkbox"/> Injury <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer <input type="checkbox"/> Dom Viol <input type="checkbox"/> Drug <input type="checkbox"/> Juvenile <input type="checkbox"/> Gang |                          |                          |                      |

**Narrative:**

No physical evidence located or available due to no recent assaulted reported by victim.

**Facts of Investigation:**

Robert and [REDACTED] have been married for the past 13 years. [REDACTED] told me that she had recently told her husband that she wanted a divorce. (V) [REDACTED] is Roberts step daughter. On 09/18/01 Robert was arrested for domestic violence assault and booked into the RJC (01-306146). According to [REDACTED] she was on the phone talking to a domestic violence counselor due to being concerned about some missing firearms that she knew her husband owned. [REDACTED] told this counselor that she was concerned for her kids and her safety due to the recent actions of her husband. During this conversation [REDACTED] told this counselor that her daughter [REDACTED] had been previously sexually assaulted by her husband. [REDACTED] stated this took place starting approx. when her daughter was 9 years of age and stopped when she was 15 years old. These assaults only stopped after [REDACTED] came to her mother and told her of these incidents.

Upon contacting [REDACTED] at her residence she was very emotional and upset. She told me that she felt something had been going on between her husband and her daughter. She told me that she would wake up in the middle of the night and her husband was not in bed. She would then find him in her daughters bedroom dressed only in his bathrobe. As soon as she would open the bedroom door he would jump up off the bed, and would be rubbing [REDACTED] back under her night clothes. [REDACTED] also told me that she had went into [REDACTED] room on numerous incidents and seen and felt wet spots on the carpet and covers after Robert had left [REDACTED] room in the middle of the night. [REDACTED] also related to me that she had seen something on [REDACTED] teddy bear that was wet and sticky feeling. This was also discovered just after her husband left her daughters room in the middle of the night. [REDACTED] stated that this type of activity had taken place numerous times over 5-6 years. When [REDACTED] was approx. 15 yoa she told her mother what had been taken place. When [REDACTED] confronted Robert about the accusations he admitted to the events, and masturbating while foundling [REDACTED]. [REDACTED] also told me that her daughter had been keeping a diary for the past several years, and there were several entries made describing how she felt it was her fault for what her husband had been doing.

I made contact with [REDACTED] at her mothers home. [REDACTED] told me that she remembers her step father coming into her room when she was approx. 9 years old. [REDACTED] told me that he started to rub her back while she was laying in her bed in the middle of the night. [REDACTED] told me that this back rubbing led to Robert rubbing her back side and then eventually taking his hand and penetrating her vagina and rubbing her genitals while he masturbated himself with his other hand. [REDACTED] told me that as she got older she remembers Robert climaxing on her covers and the floor of her room. During my converstaion with [REDACTED] she told me that Robert used to pick her up and place her on his his genital area and then move her around as they lay on her bed. I asked [REDACTED] if she had

DO NOT DISCLOSE:



# King County Sheriff's Office

01-306500

Page 3

Domestic Violence:

## INCIDENT REPORT

148-E-0

District: F-7

written anything in her diary about these incidents. She told me that she had, and showed me several entries in her diary talking about these situations and the dislike for her step father. I requested that [REDACTED] hang on to her diary, that a detective would like to review it as the investigation continues.

Prior to leaving the residence [REDACTED] told me that she recently discovered that her husband has been using marijuana, and has found evidence of such in vehicle and his garage. [REDACTED] told me that Robert had also lost approx \$ 20,000.00 in gambling over the last year. [REDACTED] also told me that she recently found a sexual blow up doll, porno magazine covers in their back yard, and she still had these items in her possession.

No statements taken from either [REDACTED] or [REDACTED] due to their emotional state, and my past involvement with their family in outside activities (kids sporting events). No attempt to contact Robert who at the time of report was still in custody at RJC

Case forwarded to SAU detectives for follow-up.

### Certification

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place: \_\_\_\_\_ Signature/Agency: \_\_\_\_\_

**END OF REPORT**

|   |             |                                |  |             |                        |               |
|---|-------------|--------------------------------|--|-------------|------------------------|---------------|
| <b>DO NOT DISCLOSE!</b> <input checked="" type="checkbox"/> |             | <b>SHERIFF<br/>KING COUNTY</b> | <b>FOLLOW-UP REPORT</b>                  |             | 01-306500              | Page 1        |
| Domestic Violence: <input type="checkbox"/>                 |             |                                |  |             | 148-M-0                | District: F-7 |
| Status:<br><b>CLOSED</b>                                    |             |                                | Disposition:<br><b>CLEARED BY ARREST</b> |             |                        |               |
| Reported:<br>09/18/01                                       | DOW:<br>Tue | Time:<br>0:45                  | Incident Type:<br><b>RAPE, CHILD</b>     |             | Initial FCR<br>148-E-0 | Court         |
| Occ Between:<br>01/01/90                                    | DOW:<br>Mon | Time:                          | And:<br>01/01/96                         | DOW:<br>Mon | Location Name:         |               |
| Incident Location:<br>220 244 AV SE                         |             |                                | City:<br>MAPLE VALLEY                    |             | State:<br>WA           | Zip<br>98038  |

**SUSPECTS/ARRESTED PERSONS SECTION**

|                                       |                  |  |                             |   |   |                                 |  |                |
|---------------------------------------|------------------|--|-----------------------------|---|---|---------------------------------|--|----------------|
| Association:<br><b>ARRESTED</b>       |                  | Last, First Middle<br><b>FREEMAN, ROBERT LEE</b> |                             |   | Interpreter Needed <input type="checkbox"/> | Booked <input type="checkbox"/> | Citation #   | Co-Defendant # |
| Address<br><b>22107 244 AV SE</b>     |                  |  | City<br><b>MAPLE VALLEY</b> |   | ST<br><b>WA</b>                             | Zip<br><b>98038</b>             | Phone Numbers:<br>Home 206/783-1039<br>Alt 425/432-5258<br>Cell [REDACTED] |                |
| Sex<br><b>M</b>                       | Race<br><b>W</b> | DOB<br><b>03/02/64</b>                           | Height<br><b>5' 10"</b>     | Weight<br><b>175</b>  | Hair<br><b>BRO</b>                          | Glass<br><b>Yes</b>             | Eyes<br><b>HAZ</b>   | Facial Hair    |
| Scars, Marks & Tattoos<br><b>NONE</b> |                  |  | Clothing                    |   | Gang  |                                 | Set  |                |
| Occupation<br><b>PAINTER</b>          |                  | Employer<br><b>BOEING</b>                        |                             | OLN<br>[REDACTED]   | ST<br><b>WA</b>                             | SSN<br>[REDACTED]               | AFIS#:   |                |
| Charges Codes:<br>148-F RAPE, CHILD   |                  |  |                             | RCW( or Local Ord) Code - Description<br>- Investigation of Rape of a Child |   |                                 | Counts:<br>1   |                |

**VICTIMS, WITNESSES AND OTHER PERSONS SECTION**

|                                 |                  |   |                             |                      |   |  |                    |             |
|---------------------------------|------------------|---|-----------------------------|----------------------|---|--|--------------------|-------------|
| Association:<br><b>VICTIM</b>   |                  | Last, First Middle<br>[REDACTED]        |                             |                      | Interpreter Needed <input type="checkbox"/> | Phone Numbers:<br>Home [REDACTED]<br>Alt [REDACTED]<br>Cell [REDACTED] |                    |             |
| Address<br><b>220 244 AV SE</b> |                  |   | City<br><b>MAPLE VALLEY</b> |                      | ST<br><b>WA</b>                             | Zip<br><b>98038</b>  |                    |             |
| Sex<br><b>F</b>                 | Race<br><b>W</b> | DOB<br><b>10/30/82</b>                  | Height<br><b>5' 2"</b>      | Weight<br><b>125</b> | Hair<br><b>BRO</b>                          | Glass  | Eyes<br><b>BRO</b> | Facial Hair |
| Scars, Marks & Tattoos          |                  |   | Clothing                    |                      | Gang  |  | Set                |             |
| Occupation<br><b>STUDENT</b>    |                  | Employer<br><b>CENTRAL WASH. UNIVER</b> |                             | OLN<br>[REDACTED]    | ST<br><b>WA</b>                             | SSN  | AFIS#:             |             |

**RECEIVED**  
MAR - 5 2002

**LODI**  
MAR 01 2002  
RJC

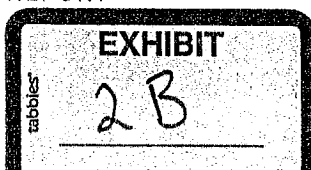
**REVIEW KCSO Records**

|                                 |   |  |
|---------------------------------|---|--|
| Date Submitted:<br>02/26/02     | Reporting Officer:<br>09904 Dahlin, Vivian E. | Event Processing Status:<br><b>Submitted</b>     |
| Date Time Reviewed:<br>02 28 02 | Reviewing Officer:<br><i>Sgt. Susan Lee</i>   | Date Status Last Changed:<br>09/25/01 1:34:24 PM |

Aid Req  Weapons  Injury  Alcohol  Computer  Dom Viol  Drug  Juvenile  Gang

CASE FOLLOW-UP REPORT

Printed by: Dahlin, Vivian E. On: Tuesday 02/26/02 14:05



-292121044

**ORIGINAL**

*AKH*

DO NOT DISCLOSE:



FOLLOW-UP REPORT

01-306500

Page 2

Domestic Violence:

148-M-0

District: F-7

Association: Last, First Middle  
**REPORTING PAR** FREEMAN, VIRGINIA SANTOS  
 Interpreter Needed  Phone Numbers:  
 Home [REDACTED]  
 Work [REDACTED]

Address City ST Zip  
 220 [REDACTED] 244 AVE SE MAPLE VALLEY WA 98038

Sex Race DOB Height Weight Hair Glass Eyes Facial Hair  
 F W 10/04/60 5' 2" 135 BRO BRO

Scars, Marks & Tattoos Clothing Gang Set

Occupation Employer OLN ST SSN AFIS#:  
 SALES ENVIROMENTAL CONTR [REDACTED] WA [REDACTED]

Association: Last, First Middle  
**OTHER** FREEBORN, STEPHEN  
 Interpreter Needed  Phone Numbers:  
 Work 425/391-3966  
 Alt 206/624-5313

Address City ST Zip  
 14401 ISSAQUAH HOBART RD ISSAQUAH WA 98027

Sex Race DOB Height Weight Hair Glass Eyes Facial Hair  
 M W

Scars, Marks & Tattoos Clothing Gang Set

Occupation Employer OLN ST SSN AFIS#:  
 ATTORNEY AT LAW SELF

PROPERTY SECTION

| Status   | Article       | Brand   | Model | Serial # |
|----------|---------------|---|-------|----------|
| EVIDENCE | 2001 CALENDAR | INSPIRATION   |       |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 1        |               | 2001 CALENDAR                                       |       |          |
| EVIDENCE | BLOW UP DOLL  |   |       |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 1        |               | BLOW UP DOLL DUG UP IN BACKYARD BY [REDACTED]       |       |          |
| EVIDENCE | CARPET FIBER  |   | PLUSH |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 1        |               | CARPET FIBER FROM [REDACTED] BEDROOM                |       |          |
| EVIDENCE | CARPET FIBER  |   | PLUSH |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 1        |               | CARPET FIBER FROM [REDACTED] BEDROOM                |       |          |
| EVIDENCE | CARPET FIBER  |   | PLUSH |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 1        |               | CARPET FIBER CONTROL SAMPLE [REDACTED] BEDROOM      |       |          |
| EVIDENCE | CONDOMS       |   |       |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 2        |               | CONDOMS REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR |       |          |
| EVIDENCE | DIARY         |   |       |          |
| Qty      | Unit of Meas: | Description   |       | Value    |
| 1        |               | DIARY   |       |          |

ORIGINAL

DO NOT DISCLOSE!



FOLLOW-UP REPORT

01-306500

Page 3

Domestic Violence:

148-M-0

District: F-7

| Status   | Article   | Brand  | Model | Serial # |
|----------|---|--------|-------|----------|
| EVIDENCE | HAIR SAMPLE   |        |       |          |
| Qty: 1   | Description: HAIR SAMPLE CUT & PULLED FROM [REDACTED]               |        |       | Value    |
| EVIDENCE | HAIR SAMPLE   |        |       |          |
| Qty: 1   | Description: HAIR SAMPLE FROM CARPET IN R. FREEMAN'S BEDROOM        |        |       | Value    |
| EVIDENCE | LETTER  |        |       |          |
| Qty: 1   | Description: LETTER FROM [REDACTED] TO [REDACTED]                   |        |       | Value    |
| EVIDENCE | LETTER  |        |       |          |
| Qty:     | Description: 2 PAGE LETTER WRITTEN BY [REDACTED]                    |        |       | Value    |
| EVIDENCE | PAPER W/HANDWRITING   |        |       |          |
| Qty: 1   | Description: PAPER REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR      |        |       | Value    |
| EVIDENCE | PAPER W/HANDWRITING   |        |       |          |
| Qty: 1   | Description: PAPER REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR      |        |       | Value    |
| EVIDENCE | SALIVA  |        |       |          |
| Qty: 2   | Description: Q-TIPS W/ROBERT FREEMAN'S SALIVA                       |        |       | Value    |
| EVIDENCE | SALIVA  |        |       |          |
| Qty:     | Description: SALIVA ON Q-TIPS - [REDACTED]                          |        |       | Value    |
| EVIDENCE | SALIVA  |        |       |          |
| Qty: 2   | Description: SALIVA ON Q-TIPS                                       |        |       | Value    |
| EVIDENCE | STUFFED BEAR  |        |       |          |
| Qty: 1   | Description: STUFFED WHITE BEAR                                     |        |       | Value    |
| EVIDENCE | TISSUES   |        |       |          |
| Qty: 6   | Description: TISSUE'S REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR   |        |       | Value    |
| EVIDENCE | TOOTHBRUSH  | ORAL-B |       |          |
| Qty: 1   | Description: TOOTHBRUSH REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR |        |       | Value    |

ORIGINAL

|   |  |  |  |          |           |               |
|---|--|--|--|----------|-----------|---------------|
| <b>DO NOT DISCLOSE!</b> <input checked="" type="checkbox"/> |  | <b>SHERIFF<br/>KING COUNTY</b>   | <b>FOLLOW-UP REPORT</b>                                    |          | 01-306500 | Page 4        |
| Domestic Violence: <input type="checkbox"/>                 |  |  |  |          | 148-M-0   | District: F-7 |
| Status<br><b>EVIDENCE</b>                                   | Article<br><b>UNDERWEAR</b>                      | Brand<br><b>FRUIT OF THE LOOM</b>  | Model  | Serial # |           |               |
| Qty<br>1  | Unit of Meas:                                    | Description<br><b>UNDERWEAR BELONGING TO R. FREEMAN</b>                        |  |          | Value     |               |
| Status<br><b>EVIDENCE</b>                                   | Article<br><b>VIDEO CASSETTE TAPE<br/>COVERS</b> | Brand  | Model<br><b>FACE ON THE<br/>COVER/ON<br/>THEIR DAY OFF</b> | Serial # |           |               |
| Qty<br>2  | Unit of Meas:                                    | Description<br><b>VIDEO COVERS REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR</b> |  |          | Value     |               |
| <b>MO</b>   |  |  |  |          |           |               |

Suspect Trademarks:

Instrument:

Entry Point:

Entry Method:

|   |                                 |                                   |                                       |
|---|---------------------------------|-----------------------------------|---------------------------------------|
| Premises Type   | Locked <input type="checkbox"/> | Occupied <input type="checkbox"/> | Total Property Cost:<br><b>\$0.00</b> |
| <input type="checkbox"/> Aid Req <input type="checkbox"/> Weapons <input type="checkbox"/> Injury <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer <input type="checkbox"/> Dom Viol <input type="checkbox"/> Drug <input checked="" type="checkbox"/> Juvenile <input type="checkbox"/> Gang |                                 |                                   |                                       |

**Reporting Officers Entries Associated with this Case Follow-up Report:**

Wednesday 09/19/01 14:18

I received this Incident Report for review and follow-up.

Monday 09/24/01 9:18

I received a message from [REDACTED]. She said she would like a phone call at [REDACTED]. She would like a case status.

Tuesday 09/25/01 10:28

I received a message from [REDACTED]. She said she can be reached at [REDACTED]. She is calling regarding case number 01-306500 and would like to know the status of the case.

Wednesday 09/26/01 11:04

I telephoned [REDACTED]. She said [REDACTED] attends college in Ellensburg. There may be a day when school is over by noon when she could drive to Kent for a joint interview. She will ask [REDACTED] to call me.

An appointment was made to interview [REDACTED] on Friday, 092801 at 11AM.

Friday 09/28/01 11:05

I arrived at [REDACTED]'s work place. She provided a tape recorded statement.

She agreed to stop by my office on Tuesday to arrange a date for me to search her residence for evidentiary items.

She said [REDACTED] is getting settled in to her new home in Ellensburg. She is busy with school and looking for a job. [REDACTED] will again ask her to call me to arrange a joint interview.

Tuesday 10/02/01 12:00

I received a message from [REDACTED]. She said she is calling regarding the case pending with [REDACTED] and ROBERT FREEMAN about the child molestation. She needs to get in contact with me so we can

**ORIGINAL**

KING COUNTY SHERIFF  
MASTER EVIDENCE RECORD

1 CASE #

**01-306500**

2. CLASSIFICATION

**RAPE, CHILD**

3. DATE

10/16/2001

4. TIME

14:10

5. FCR

148

6. DIST #

F-7

7. LOCATION OF OCCURRENCE

**22009 244 AV SE**

8. NAME:  OWNER  SUSPECT (LAST, FIRST, M.I., D.O.B.)

9. EVIDENCE SECURED BY

**Dahlin, Vivian E.**

PERS #

09904

12. STATUS OF EVIDENCE

- EVIDENCE
- DISTRICT COURT
  - MUNICIPAL COURT
  - JUVENILE COURT
  - SUPERIOR COURT
  - TRAFFIC ACCIDENT
  - PENDING INVEST

OTHER

- UNCLAIMED IMPOUND
- D V ORDER
- CIVIL UNIT ACTION
- OTHER (LIST)

10. PACKED AND MARKED BY

**Dahlin, Vivian E.**

PERS #

09904

(CHECK BOXES IN APPLICABLE SECTION)

11. INVESTIGATOR AND UNIT ASSIGNED

**Dahlin, Vivian E. of Special Assault**

PERS #

09904

LIST EVIDENCE IN THE FOLLOWING ORDER:

A. Fingerprint Lift Cards. B. Money. C. Items requiring processing for fingerprints. D. Items requiring other lab processing. E. Other Evidence.

NOTE: DO NOT LIST UNPROCESSED FILM, FOUND PROPERTY, SKO PROPERTY, MOTOR VEHICLES, BICYCLES, OR ANIMALS ON THIS FORM. (Film that requires processing shall be listed on a FORM E-147 and sent to Photo Lab. Found property shall be listed on a Form A-166. SKO property shall be listed on a FORM A-142. Bicycles shall be listed on a FORM C-115 unless they are evidence in some other case)

| 13. ITEM # | QTY | 14. DESCRIPTION: USE A SEPERATE ITEM # FOR EACH ITEM. DO NOT LIST MORE THAN ONE ITEM PER LINE. Each Item MUST be Numbered, tagged and separately packaged. LIKE ITEMS MAY BE PACKAGED TOGETHER AND MARKED AS ONE ITEM # Describe using the following format: What is it? Brand, Model, Serial #, Color, etc. | Disp Code | FOR PMU USE ONLY |
|------------|-----|--|-----------|------------------|
| VED0001    | 1   | BLOW UP DOLL, BLOW UP DOLL DUG UP IN BACKYARD BY [REDACTED]  | 1         |                  |
| VED0002    | 1   | PAPER W/HANDWRITING, PAPER REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR   | 1         |                  |
| VED0003    | 1   | PAPER W/HANDWRITING, PAPER REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR   | 1         |                  |
| VED0004    | 1   | TOOTHBRUSH, brand: ORAL-B, TOOTHBRUSH REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR  | 1         |                  |
| VED0005    | 2   | CONDOMS, CONDOMS REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR   | 1         |                  |
| VED0006    | 6   | TISSUES, TISSUE'S REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR  | 1         |                  |
| VED0007    | 2   | VIDEO CASSETTE TAPE COVERS, model: FACE ON THE COVER/ON THEIR DAY OFF, VIDEO COVERS REMOVED BY [REDACTED] FROM R. FREEMAN'S CAR  | 1         |                  |
| VED0008    | 1   | UNDERWEAR, brand: FRUIT OF THE LOOM, UNDERWEAR BELONGING TO R. FREEMAN   | 1         |                  |
| VED0009    | 1   | HAIR SAMPLE, HAIR SAMPLE CUT & PULLED FROM [REDACTED]  | 1         |                  |
| VED0010    | 1   | HAIR SAMPLE, HAIR SAMPLE FROM CARPET IN R. FREEMAN'S BEDROOM   | 1         |                  |
| VED0011    | 1   | CARPET FIBER, model: PLUSH, CARPET FIBER FROM [REDACTED]'S BEDROOM   | 1         |                  |
| VED0012    | 1   | CARPET FIBER, model: PLUSH, CARPET FIBER FROM [REDACTED]'S BEDROOM   | 1         |                  |

15. DISPOSE: PER R.C.W. AND DEPARTMENT REGULATIONS **ONLY IF ALL ITEMS ON THIS PAGE ARE FOR DISPOSAL SIGNATURES REQUIRED IN BOXES BELOW.**  
(Evidence will be held 60 days after date this authorization is approved.)

|                                     |      |      |                                   |
|-------------------------------------|------|------|-----------------------------------|
| Disposal Authorization: (Signature) | DATE | TIME | Witness to Disposal Authorization |
|-------------------------------------|------|------|-----------------------------------|

16. FIELD RELEASE: Use following blocks **ONLY IF ALL ITEMS ON THIS PAGE ARE RELEASED TO ONE PERSON and ONLY BEFORE SIGNATURE AND PRINTED INFORMATION REQUIRED BELOW**  
any copies of the form have been separated and distributed.

|   |                                   |       |       |
|---|-----------------------------------|-------|-------|
| Property listed on this form - Received by: (Signature) | Printed name of person receiving: | DATE  | TIME  |
| Street Address  | City                              | STATE | ZIP   |
|   |                                   |       | PHONE |

|                          |   |        |                |               |
|--------------------------|---|--------|----------------|---------------|
| 17. RETAINED AT PRECINCT | # | REASON | 18. COURT NAME | CITATION #(S) |
|--------------------------|---|--------|----------------|---------------|

DO NOT WRITE ON OR OVER SHADED AREAS OF FORM



**KING COUNTY SHERIFF  
MASTER EVIDENCE RECORD**

I. CASE #

**01-306500**

2. CLASSIFICATION

**RAPE, CHILD**

3. DATE

**01/31/2002**

4. TIME

**13:31**

5. P.C.R.

**148**

6. DIST #

**F-7**

7. LOCATION OF OCCURRENCE

**22009 244 AV SE**

8. NAME:  OWNER  SUSPECT (LAST, FIRST, M.I., D.O.B.)

**10/04/1960**

9. EVIDENCE SECURED BY:

**Dahlin, Vivian E.**

PERS. #

**09904**

10. PACKED AND MARKED BY

**Dahlin, Vivian E.**

PERS. #

**09904**

11. INVESTIGATOR AND UNIT ASSIGNED

**Dahlin, Vivian E. of Special Assault**

PERS. #

**09904**

12. STATUS OF EVIDENCE

(CHECK BOXES IN APPLICABLE SECTION)

- EVIDENCE
- DISTRICT COURT
  - MUNICIPAL COURT
  - JUVENILE COURT
  - SUPERIOR COURT
  - TRAFFIC ACCIDENT
  - PENDING INVEST.

- OTHER
- UNCLAIMED IMPOUND
  - D.V. ORDER
  - CIVIL UNIT ACTION
  - OTHER (LIST)

LIST EVIDENCE IN THE FOLLOWING ORDER: A. Fingerprint Lift Cards. B. Money. C. Items requiring processing for fingerprints. D. Items requiring other lab processing. E. Other Evidence.  
 NOTE: DO NOT LIST UNPROCESSED FILM, FOUND PROPERTY, SKO PROPERTY, MOTOR VEHICLES, BICYCLES, OR ANIMALS ON THIS FORM. (Film that requires processing shall be listed on a FORM E-147 and sent to Photo Lab. Found property shall be listed on a Form A-166. SKO property shall be listed on a FORM A-142. Bicycles shall be listed on a FORM C-115 unless they are evidence in some other case.)

| 13. ITEM #                                   | QTY | 14. DESCRIPTION: USE A SEPERATE ITEM # FOR EACH ITEM. DO NOT LIST MORE THAN ONE ITEM PER LINE. Each Item MUST be Numbered, tagged and separately packaged. LIKE ITEMS MAY BE PACKAGED TOGETHER AND MARKED AS ONE ITEM #. Describe using the following format: What is it? Brand, Model, Serial #, Color, etc. | Disp Code | FOR PMU USE ONLY |
|--|-----|---|-----------|------------------|
| VED0017                                      | 2   | SALIVA, SALIVA ON Q-TIPS  | 1         |                  |
| VED0018                                      | 1   | 2001 CALENDAR, brand: INSPIRATION, 2001 CALENDAR  | 1         |                  |
| <p><b>ORIGINAL</b></p> <p><b>"White"</b></p> |     |   |           |                  |

15. DISPOSE: PER R.C.W. AND DEPARTMENT REGULATIONS **ONLY IF ALL ITEMS ON THIS PAGE ARE FOR DISPOSAL**  
 (Evidence will be held 60 days after date this authorization is approved.) **SIGNATURES REQUIRED IN BOXES BELOW.**

|                                     |      |      |                                   |
|-------------------------------------|------|------|-----------------------------------|
| Disposal Authorization: (Signature) | DATE | TIME | Witness to Disposal Authorization |
|-------------------------------------|------|------|-----------------------------------|

16. FIELD RELEASE: Use following blocks. **ONLY IF ALL ITEMS ON THIS PAGE ARE RELEASED TO ONE PERSON** and **ONLY BEFORE**  
 any copies of the form have been seperated and distributed. **SIGNATURE AND PRINTED INFORMATION REQUIRED BELOW**

|   |                                   |       |      |
|---|-----------------------------------|-------|------|
| Property listed on this form - Received by: (Signature) | Printed name of person receiving: | DATE  | TIME |
| Street Address  | City                              | STATE | ZIP  |
|   |                                   | PHONE |      |

|                          |   |        |                |               |
|--------------------------|---|--------|----------------|---------------|
| 17. RETAINED AT PRECINCT | # | REASON | 18. COURT NAME | CITATION #(S) |
|--------------------------|---|--------|----------------|---------------|

**DO NOT WRITE ON  
OR OVER SHADED  
AREAS OF FORM**

KING COUNTY SHERIFF  
 MASTER EVIDENCE RECORD

1 CASE #

**01-306500**

2 CLASSIFICATION

**RAPE, CHILD**

3 DATE

**01/25/2002**

4 TIME

**14:05**

5 FCR

**148**

6 DIST #

**F-7**

7 LOCATION OF OCCURRENCE

**22009 244 AV SE**

8 NAME  OWNER  SUSPECT (LAST, FIRST, M.I., D.O.B.)

**FREEMAN, ROBERT LEE, 03/02/1964**

9 EVIDENCE SECURED BY:

**Dahlin, Vivian E.**

PERS #

**09904**

12 STATUS OF EVIDENCE

- DISTRICT COURT  
 MUNICIPAL COURT  
 JUVENILE COURT  
 SUPERIOR COURT  
 TRAFFIC ACCIDENT  
 PENDING INVEST.

OTHER

- UNCLAIMED IMPOUND  
 D V ORDER  
 CIVIL UNIT ACTION  
 OTHER (LIST)

10 PACKED AND MARKED BY

**Dahlin, Vivian E.**

PERS #

**09904**

(CHECK BOXES IN APPLICABLE SECTION)

11 INVESTIGATOR AND UNIT ASSIGNED

**Dahlin, Vivian E. of Special Assault**

PERS #

**09904**

LIST EVIDENCE IN THE FOLLOWING ORDER:

A. Fingerprint Lift Cards. B. Money. C. Items requiring processing for fingerprints. D. Items requiring other lab processing. E. Other Evidence.

NOTE: DO NOT LIST UNPROCESSED FILM, FOUND PROPERTY, SKO PROPERTY, MOTOR VEHICLES, BICYCLES, OR ANIMALS ON THIS FORM. (Film that requires processing shall be listed on a FORM E-147 and sent to Photo Lab. Found property shall be listed on a Form A-166. SKO property shall be listed on a FORM A-142. Bicycles shall be listed on a FORM C-115 unless they are evidence in some other case)

| 13 ITEM #       | QTY | 14 DESCRIPTION: USE A SEPERATE ITEM # FOR EACH ITEM. DO NOT LIST MORE THAN ONE ITEM PER LINE. Each Item MUST be Numbered, tagged and separately packaged. LIKE ITEMS MAY BE PACKAGED TOGETHER AND MARKED AS ONE ITEM # Describe using the following format: What is it? Brand, Model, Serial #, Color, etc. | Disp Code | FOR PMU USE ONLY |
|-----------------|-----|---|-----------|------------------|
| VED0016a        | 2   | SALIVA, Q-TIPS W/ROBERT FREEMAN'S SALIVA  | 1         |                  |
| <b>ORIGINAL</b> |     |   |           |                  |
| <b>"White"</b>  |     |   |           |                  |

15. DISPOSE: PER R.C.W. AND DEPARTMENT REGULATIONS

**ONLY IF ALL ITEMS ON THIS PAGE ARE FOR DISPOSAL SIGNATURES REQUIRED IN BOXES BELOW.**

(Evidence will be held 60 days after date this authorization is approved).

|                                     |      |      |                                   |
|-------------------------------------|------|------|-----------------------------------|
| Disposal Authorization: (Signature) | DATE | TIME | Witness to Disposal Authorization |
|-------------------------------------|------|------|-----------------------------------|

16. FIELD RELEASE: Use following blocks. any copies of the form have been seperated and distributed.

**ONLY IF ALL ITEMS ON THIS PAGE ARE RELEASED TO ONE PERSON and ONLY BEFORE SIGNATURE AND PRINTED INFORMATION REQUIRED BELOW**

|   |                                   |       |      |
|---|-----------------------------------|-------|------|
| Property listed on this form - Received by: (Signature) | Printed name of person receiving: | DATE  | TIME |
| Street Address  | City                              | STATE | ZIP  |
|   |                                   | PHONE |      |

|                          |   |        |                |               |
|--------------------------|---|--------|----------------|---------------|
| 17. RETAINED AT PRECINCT | # | REASON | 18. COURT NAME | CITATION #(S) |
|--------------------------|---|--------|----------------|---------------|

**DO NOT WRITE ON OR OVER SHADED AREAS OF FORM**

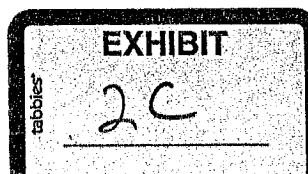


- d. Bottles and jars shall be capped tightly to avoid leakage and then sealed with tape.
  - The tape shall extend across the top of the lid and down the sides of the container.
    - The initials shall be written across the tape and onto the container.
- e. **Staples on envelopes or paper bags do not constitute proper seals.**
9. Control samples:
  - Control (known) samples are necessary when comparisons are to be made.
10. Documenting evidence:
  - a. The circumstances in which evidence is obtained shall be documented in the incident report.
  - b. The description of each item will be recorded on the Master Evidence Record (KCSO A-102).
11. Shipping evidence to Crime Lab:
  - a. Ship evidence by the US Postal Service using either Registered or Certified Mail.
    - United Parcel Service can be used as an alternate.
  - b. Follow instructions involving shipment of biological specimens.
  - c. If the evidence is fragile or in some way difficult to ship, it should be delivered personally.
12. The Request for Laboratory Examination Form is required by the State Crime Lab and must accompany all submissions of evidence to the crime lab. The following are important point when filling out this form:
  - a. Fill in all of the requested information, incomplete forms will not be accepted.
    - If a suspect or victim name is unknown, indicate that in the appropriate block on form.
  - b. Always list the most serious offense first.
  - c. If needed, link the current submission with any previous submissions from the same investigation.
  - d. Include the investigator's phone number and email address.
  - e. List the order of priority in which the investigator would like the evidence examined.
  - f. When submitting six (6) or more items the submitter should fax a copy of the lab request or the list of exhibits to the crime lab and stating when the investigator will be available for the crime lab to call to discuss and prioritize the list of exhibits.
  - g. The WSP Crime Lab and Toxicology Lab provide written reports of laboratory findings as standard procedure on all laboratory examination requests. The requesting detective should note the desire for a written report in the narrative portion of requests to crime labs other than the WSPCL.

8.01.020

**BIOLOGICAL FLUIDS AND STAINS AND CELLULAR MATERIAL: 02/10**

Forensic biochemical and DNA analyses are frequently of value in investigations, particularly those involving violent crimes. The recognition and recovery of such evidence must be performed properly by deputies and investigators. Deputies and investigators shall treat all blood and bloodstained objects as sources of bloodborne pathogens and take appropriate protective actions when processing a crime scene.



1. Precautions:
  - a. The handling of biological fluids and stains present a hazard due to possible presence of bloodborne pathogens.
    - Refer to GOM 10.00.000, Exposure Control Plan.
  - b. Protective gloves shall be worn to protect the hands.
  - c. Pointed and sharp edged objects shall be handled with extreme care.
  - d. Blind searches shall be avoided.
    - Searchers shall not place their hands into any space that is not first visually inspected.
  - e. Shoes should be protected from blood on the floor or ground.
  - f. Good hygiene should be observed.
    - Hands should be washed thoroughly after the removal of protective gloves.
2. Significance:
  - a. Biological fluids and stains can be helpful in many ways. Some include:
    - Assist in locating the crime scene.
    - Determine if a crime has been committed.
    - Help identify the weapon used.
    - Assist in eliminating or establishing suspects.
    - Establish or disprove an alibi.
    - Assist in reconstructing events.
  - b. Biological and microscopic analyses can often:
    - Identify the fluid or stain as blood, semen, saliva, or urine.
    - Determine the species as human or animal.
    - Determine the presence of various blood factors.
    - Establish the probability of an individual as the source through traditional and DNA analyses.
  - c. DNA analysis can conclude:
    - Identify the suspect(s).
    - Exclude individuals not involved in the crime being investigated.
    - Reconstruct the events related to the crime.
    - Identify the weapon used.
    - Locate the crime scene.
    - The identity of a missing person or the unidentified remains of a person.
3. Crime scene search:
  - a. A careful search must be made of the scene.
    - Although bloodstains are often obvious, care must be taken that small stains are not overlooked.

- b. If bloodstains, spatters or smears are present, they should be:
  - Carefully recorded as to the size, shape, location and pattern.
  - Diagrammed in detail.
  - Photographed from long, medium and close ranges.
  - A scale should be included in the photographs.

4. Collection of biological fluids and stains:

Blood and bloodstained articles require special handling as evidence. The evidentiary value of blood and bloodstained articles can be reduced, or destroyed by bacterial action and warm temperatures.

- a. Bloodstains and other biological stains must be air-dried at room temperature without the application of any heat or sunlight.
- b. It is best to air dry and then freeze the stains.
  - If unable to freeze, store the dried evidence in a cool dry place.
- c. After drying, store the stained evidence in manila envelopes or brown paper bags.
  - **Do not use plastic bags or containers.**
- d. When removing dried bloodstains from a surface, two methods may be used:
  - Transfer the stain to clean cotton threads dampened with clean water using a swabbing action.
    - This is the preferred method for laboratory examinations.
  - Transfer the stain onto clean paper using a clean scalpel, knife, or tweezers.
- e. Obtain a control sample of the unstained area adjacent to the stain using the same method used when gathering the stain.
- f. Package stain sample and control separately and ensure that each are properly labeled with case and item numbers, location, date, and initials of the person collecting the items.
  - Do not allow the stain and control sample to come into contact with each other.

5. Collecting liquid blood:

- a. Remind the medical personnel to collect the liquid blood in **lavender top** vacutainer tubes.
  - Do not confuse with gray top tubes which are used for alcohol and drug analysis.
- b. Ensure the tubes are properly labeled with name and date.
- c. Refrigerate the tube(s) for at least two (2) hours before packaging for shipping.
- d. Ship liquid blood to the crime laboratory within five (5) days of collection.
  - This is important if the possibility of getting a later specimen from the subject is highly unlikely or nonexistent.

6. Collecting small bloodstained articles:
  - a. Air dry entire article at no higher than room temperature.
  - b. Package the article in manila envelopes or brown paper bags.
    - Do not use plastic bags or containers that form a vapor barrier, as condensation may form inside the container leading to degradation and putrefaction of the sample.
  - c. After drying, keep article frozen.
    - If freezer storage is not available, keep the dried article cool and dry.
  - d. Hard or metal objects such as rocks, guns, and knives should not be frozen. These types of objects should be air dried, kept cool, and sent to the crime laboratory as soon as possible.
    - Condensation will form on these objects when thawed and brought to room temperature.
    - The condensation will dilute the stain.
    - Do not place in plastic bags or containers.
  - e. Send entire article in for analysis.
7. Collecting samples from large bloodstained objects:
  - a. Cut out stained area or, at least, several square inches of the stained area and if the sample is still moist, air dry at room temperature.
  - b. Cut out a control sample of an unstained portion of the object adjacent to the stained area.
  - c. Package and label each sample separately ensuring that the control sample and stained sample are not mixed or confused.
  - d. Store the stained sample and control in the same manner by air drying and freezing.
8. Collecting evidence from non-removable bloodstained objects:
  - a. If the bloodstain is wet and sufficiently large, collect the stain on a piece of clean cotton gauze.
    - For smaller stains, use a portion of the gauze.
    - Air dry the collected stain place it in a paper envelope, and seal and label the envelope.
  - b. If the blood is dry and can be easily flaked off the surface, use a clean scalpel or knife and scrape it into a clean piece of paper. Fold and tape the paper and keep in a cool dry place.
    - Clean the blade of the scalpel or knife with tap water and wipe with a clean tissue prior to each use.
  - c. A control sample must be taken from an area adjacent to the stain.
  - d. If the bloodstain cannot be easily removed by scraping, the stain must be swabbed.
    - For large stains a gauze pad can be used and a portion of a gauze pad can be used for smaller stains.
    - Hold the gauze by the corners or if possible, use tweezers.
      - Do not touch the area of the gauze where the sample is to be taken.
    - Moisten the cotton enough to dissolve the stain, not dripping wet.
    - Swab the stain keeping the transference concentrated on the cotton.
      - The stain should appear dark on the cotton.

- Saturate an area the size of a half dollar, approximately one (1) inch in diameter, on the cotton.
- A control sample must be taken, following the same procedure.
- Air dry the sample and control, and package and label each separately in manila envelopes and freeze or keep cool and dry.

9. Preservation:

Bacterial action, mold, sunshine, moisture and warm temperatures can damage the evidentiary value of biological evidence due to the damage or destruction of DNA.

10. Shipping procedures:

Dried stained evidence, control samples and liquid blood samples should be sent by Registered or Certified Mail or sent via UPS to the WSPCL via the PMU.

- a. Dried stain evidence and control samples must be packaged in brown paper or paper sacks.

- Do not use plastic bags or containers.

- b. Liquid blood samples must be packaged according the specific procedures described below.

- Chill the blood at least two hours before packaging for mailing.
- Wrap the **lavender-top** tubes in absorbent material (e.g., several facial tissues or a paper towel), which is capable of absorbing the enclosed fluid, and place in a small resealable plastic bag.
- Close the plastic bag and tape the top edges together with evidence tape.
- Place the sealed plastic bag containing the tubes into another resealable plastic bag and close and seal with tape.
- The double plastic bags will prevent leakage.
- Place the sealed plastic bags containing the tubes in a styrofoam mailing container.
- Seal the styrofoam container with packaging tape around the perimeter to prevent leakage.
- Place the styrofoam container in a cardboard box.
- Label and mark the carton "**Clinical Specimen**".
- Do not mark the carton with the word blood.

8.01.025

**FIREARMS EVIDENCE: 10/00**

The purpose of this section is to establish guidelines for the consistent processing, handling and submission to the WSPCL of all firearms and firearm related evidence that have been recovered during investigations by deputies.

1. Purpose:

- a. All firearms used in the commission of a crime, illegally possessed, found or recovered, will be processed as evidence.
- Does not include firearms turned in for safekeeping or turned over because of a DV court order.



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

|                      |   |                      |
|----------------------|---|----------------------|
| STATE OF WASHINGTON, | ) |                      |
|                      | ) |                      |
| Plaintiff,           | ) | No. 02-1-01727-1 KNT |
|                      | ) |                      |
| vs.                  | ) | DECLARATION OF       |
|                      | ) | SUZANNA RYAN         |
| ROBERT LEE FREEMAN,  | ) |                      |
|                      | ) |                      |
| Defendant.           | ) |                      |
|                      | ) |                      |

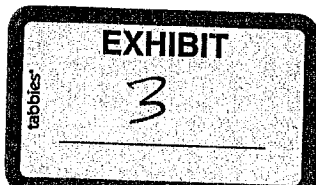
I, Suzanna Ryan, hereby declare as follows:

I am a forensic scientist. I own and operate Ryan Forensic DNA Consulting. I have nearly 20 years experience in the field of forensic serology and DNA analysis, which includes 11 years as a forensic DNA laboratory analyst. My background, training, and experience are documented in my attached curriculum vitae. I have extensive experience as a forensic scientist, and my testimony has been admitted numerous times in courts. Currently, in addition to my occupation as an Independent Forensic DNA Consultant for Ryan Forensic DNA Consulting, I am also the Laboratory Director and a Forensic DNA Analyst at Pure Gold Forensics, as well as Forensic Serologist at Advanced Serology Laboratory.

As indicated in my curriculum vitae, I have functioned as a forensic expert witness well over 100 times, and that has occurred in cases that cover over a dozen different states

Declaration of Suzanna Ryan - 1

HESTER LAW GROUP, INC., P.S.  
1008 SOUTH YAKIMA AVENUE, SUITE 302  
TACOMA, WASHINGTON 98405  
(253) 272-2157



1 and territories (e.g. DC) and in Germany. I have also participated in over 20 depositions as  
2 an expert witness.

3 Beyond my work as an expert witness and forensic scientist, I have kept my  
4 education current, have presented DNA trainings professionally on many occasions, and have  
5 published many articles on DNA evidence, including two peer-reviewed journal articles.

6 My recent work has included a 2017 case in San Diego Superior Court (California),  
7 *In The Matter of the Petition of Florencio Jose Dominguez*. My testimony in the *Dominguez*  
8 case, which was a Writ of Habeas Corpus, addressed current DNA standards compared to  
9 standards used in 2010 when the defendant was convicted. The conviction was reversed.

10 I have reviewed the trial transcripts of the case of *State v. Freeman*, bearing the dates  
11 of March 18, 2003 through March 27, 2003. Having reviewed the trial transcripts and most  
12 specifically the testimony relevant to the carpet samples and stuffed teddy bear in that case, I  
13 offer the opinions shown throughout this declaration, below. I base my opinions in this case  
14 on my education, training, and experience in the field of forensic serology and DNA analysis  
15 and upon accepted scientific literature.

16 Having reviewed the trial transcripts, I have formulated the opinions in the sections  
17 below. Page references are to the trial transcript. My opinions are fairly categorized in three  
18 following areas: evidence issues, serology testing, and DNA testing and are discussed below:

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**Evidence Issues:**

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1. The evidence could have been tampered with at any time by Virginia Freeman.

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Mrs. Freeman states that she handed the teddy bear to Detective Darlin and she was present

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during the evidence examination of the bedroom and pointed out the stains. No other stains

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than those selected and pointed out by Mrs. Freeman are noted or collected. There is no way

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1 to determine how old the stains are or how long they have been on the carpeting or teddy  
2 bear or how they arrived in those locations.

3 2. Det. Dahlin did not place rulers by any of the carpet stains prior to photographing  
4 the stains in order to aid the viewer in determining the size of the stains. She states that she  
5 did not see any other stains, but no one asked her what sort of evidence examination she  
6 performed. For example, there is no testimony indicating whether there was a visual exam  
7 only, whether she used an alternate light source, or whether she did any sort of presumptive  
8 semen testing at the scene. No evidence exists indicating she called in a crime scene unit to  
9 examine the room. She did not look anywhere else in the room for semen stains, nor did she  
10 collect or examine any of the bedding or any other stuffed animals on Arnie's bed.

11 3. It is unclear exactly what was used to take the carpet clippings described by Det.  
12 Dahlin or whether that implement was sterile prior to use and was cleaned in between  
13 collection of the three clippings and the control sample. It is imperative that sterilized or  
14 otherwise cleaned scissors, razor blades, or other cutting implements be used when collecting  
15 biological evidence samples. In addition, these cutting implements must be used only once  
16 or they must be cleaned with a bleach or similar solution in between uses to ensure that the  
17 inadvertent transfer of DNA, and/or semen, does not occur between samples thus leading to  
18 cross-contamination of samples.

19 4. Det. Dahlin did not package or store the evidence properly. Biological evidence  
20 should never be placed in plastic as plastic is not a breathable material (like paper bags or  
21 envelopes are) and this can promote mold and bacterial growth which will quickly degrade or  
22 destroy DNA evidence. After collecting the evidence, Det. Dahlin did not immediately  
23 secure the evidence. Instead, she left it in her trunk for nearly a week. During this time  
24 period, the possibility of DNA degradation increases if the evidence is exposed to heat or  
25 humidity while in the trunk of the car.

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**Serology testing:**

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The stains from the carpet were acid phosphatase (AP) positive. While it is true that stains can remain AP positive for many years, if the carpet had been cleaned with a cleaner, wiped down with water, or otherwise treated over the years from the time Amie reported the alleged abuse and the stains were collected from the carpet, it is likely that the AP activity would be, at a minimum, reduced. AP is an enzyme found in high concentrations in semen. Enzymes are water-soluble and semen stains that have been laundered, for example, will lose their AP activity.

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**DNA Testing:**

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1. Considering the fact that the epithelial fraction of both carpet samples is consistent with both Robert and Amie Freeman, it is likely that there was a fairly low level of DNA from Amie present in the samples. The analyst is correct when she states on page 403 of the transcripts that she can't say what type of cells are present or how they got there. The DNA present that is consistent with Amie could very easily be from skin cells or saliva that were already present on the carpeting. If the analyst had tested the control sample that was collected, she may have been able to determine if background DNA was indeed present on the carpet and if so, who it was consistent with. Considering that this room was occupied by Amie Freeman for many years, it is not surprising to see her DNA present on the carpeting.

2. The fact that Robert Freeman's DNA was located in the epithelial cell fraction could be due to his DNA also being present in the "background" DNA from the carpeting. It could also be due to sperm cells breaking down prior to the addition of the DTT reagent (which is used to break open the disulfide bonds on the sperm heads and access their DNA). If this has occurred it could be due to old age of the semen stains or it could be due to the poor conditions that the semen stains were exposed to during packaging (in a plastic contact

1 lens case), transport (in the trunk of a car), and storage (left for nearly a week in the trunk of  
2 Det. Dahlin's car).

3 3. I agree with the analyst, Dr. Beverly Himick, when she states that she can't say  
4 whether the cells (those consistent with Amie and those consistent with Robert) landed on the  
5 carpet at the same time or different times (page 404). In addition, I am in agreement that the  
6 presence of Amie's DNA in the carpet samples doesn't indicate sexual contact has occurred  
7 (page 414).

8 4. I also agree with the analyst that it is not likely that the stains are from dripping out  
9 of Virginia Freeman's body after she had sex with her husband. One would expect a mixture  
10 of DNA consistent with both Virginia and Robert if that were the case due to the very large  
11 number of nucleated epithelial cells that are present lining the vaginal cavity. On the other  
12 hand, if someone had semen in their hand and then dripped it onto the floor, or spread it on  
13 the teddy bear, I would not necessarily expect to see their DNA present in the epithelial cell  
14 fraction since there is typically (although not always) a low amount of DNA present in skin  
15 cells/touch DNA. In addition, there is epithelial cell DNA from the male present in semen as  
16 epithelial cells also line the urethra. These male epithelial cells from a neat semen stain  
17 would be competing with any DNA from the hands of a person who was "planting" the  
18 semen stains such that the "planter's" DNA may be masked by the larger contribution of  
19 male DNA from the semen stain.

20 5. On page 419 - the prosecution misstates the analyst's testimony and she does not  
21 correct him regarding the "only way" for Robert Freeman's DNA to arrive on the carpet  
22 without seeing the presence of Virginia Freeman's DNA is if the defendant were to  
23 masturbate into a container, and that container... was then dumped out". On cross-exam this  
24 is assertion is somewhat, but not fully, corrected.

25



**EDUCATION:**

**Master of Science in Forensic Science**  
*December, 1998*

**Virginia Commonwealth University**  
Richmond, VA

**Bachelor of Science – Biology**  
Minor in Chemistry  
*May, 1997*

**Lock Haven University of Pennsylvania**  
Lock Haven, PA

**EXPERIENCE:**

**Independent Forensic DNA Consultant**  
*March 2008 – Present*

**Ryan Forensic DNA Consulting**  
Carlsbad, CA

- ◇ Provide Forensic DNA and Serology consultation services and Expert Witness testimony to law enforcement, prosecution and defense agencies
- ◇ Perform complete review of Forensic DNA casework including bench notes, DNA data, mixture interpretations, and statistical conclusions
- ◇ Review of electronic DNA data utilizing Applied Biosystems' GeneMapper ID or Softgen's GeneMarker HID software
- ◇ Offer pre-trial and trial assistance
- ◇ Present educational programs and DNA training for trial counsel and others in the legal system

**Laboratory Director/Forensic DNA Analyst**  
*February 2017 - Present*

**Pure Gold Forensics**  
Redlands, CA

- ◇ Devise and implement validation studies for DNA Extraction, Quantifiler Trio Quantitation on the QuantStudio 5, Globalfiler Amplification, and Y-Filer Plus Amplification.
- ◇ Assist in writing protocols and updating the Quality Assurance Manual in order to comply with ISO 17025 Accreditation requirements.
- ◇ Perform forensic DNA casework using Globalfiler STR DNA analysis methods

**Forensic Serologist**  
*November 2015-Present*

**Advanced Serology Laboratory**  
Carlsbad, CA

- ◇ Perform biological evidence screening on casework evidence
- ◇ Test evidence items for the presence of blood, semen, saliva, vaginal fluid, and menstrual fluid
- ◇ Collect DNA samples using the M-Vac Wet Vacuum DNA Collection System

**Interim Technical Leader/Forensic Scientist**  
*October 2009 – March 2010*

**Human Identification Technologies**  
Redlands, CA

- ◇ Performed serological screening on casework submitted by prosecution and defense agencies
- ◇ Performed forensic DNA analysis on casework submitted by prosecution and defense agencies
- ◇ Reviewed other analyst's work
- ◇ Acted as interim technical leader and aided in maintaining ASCLD/LAB International accreditation

**Forensic DNA Technical Leader &  
Quality Assurance Manager**  
*September, 2006 – March, 2008*

**Crime Scene Technologies**  
San Diego, CA

- ◊ Responsible for maintaining ASCLD/LAB accreditation of the laboratory
- ◊ Wrote and revised laboratory methods and quality assurance procedures
- ◊ Devised and performed validation studies for new serology and DNA methodologies
- ◊ Screened evidence items for the presence of blood, semen, urine, and saliva
- ◊ Performed STR DNA typing on evidentiary items submitted to the lab
- ◊ Utilized Organic, Chelex, and DNA IQ extraction methods with Quantifiler quantitation and electrophoresis on an ABI 310 with analysis using GeneMapper ID
- ◊ Fully trained to use and interpret Identifiler, Yfiler, and Minifiler amplification kits/results
- ◊ Wrote detailed reports based upon findings
- ◊ Testified in court as an expert witness when needed
- ◊ Technically reviewed all other analysts' work
- ◊ Responsible for all technical aspects of the lab including troubleshooting problems

**Instructor**  
*August 2009 – December 2012*

**VLETA.net**

- ◊ Created online Serology and DNA-related training programs for attorneys and for members of the law enforcement community via the Virtual Learning and Training Academy

**Contributing Author**  
*July 2008 – February 2009*

**LawOfficer.com**

- ◊ Wrote a monthly column for LawOfficer.com concentrating on DNA-related topics

**Adjunct Professor**  
*July 2007 – May 2010*

**National University**  
San Diego, CA

- ◊ Created course syllabus and all test materials for a course entitled "Advanced Forensic Serology and DNA" for the Master of Forensic Science program at National University
- ◊ Created course syllabus and all test materials for an online course entitled "Advanced Criminalistics" for the Master of Forensic Science program at National University
- ◊ Instruct students on techniques of serological testing, sperm cell identification, and hair identification
- ◊ Instruct students on all aspects of forensic DNA analysis including historical techniques
- ◊ Designed laboratory exercises to augment student learning

**DNA and GPA Auditor/Assessor**  
*June, 2006 – August 2011*

**National Forensic Science Tech. Center**  
Largo, FL

- ◊ Trained by FBI personnel to perform DNA Audits of forensic DNA laboratories following the FBI's National DNA Quality Assurance Standards

**Criminalist II**  
*November, 2005 – August, 2006*

**Charlotte-Mecklenburg Police Dept. Crime Lab**  
Charlotte, NC

- ◊ Screened evidence items for the presence of blood, semen, and saliva
- ◊ Performed microscopic examination of hairs
- ◊ STR DNA typing of evidence and reference items utilizing PowerPlex 16 amplification kits
- ◊ Entered qualifying profiles into the CODIS database
- ◊ Technically reviewed other analyst's work
- ◊ Wrote reports based upon serology and DNA findings
- ◊ Attended Homicide Investigators morning meetings to render assistance when needed





**Adjunct Instructor**

*July, 2005 – November 2005*

**Hillsborough Community College**

Tampa, FL

- ◇ Created and taught a course entitled "Introduction to Criminalistics" for two semesters
- ◇ Course provided overview of multiple forensic disciplines including: blood spatter analysis, latent print identification, firearms identification, crime scene analysis techniques, fiber and hair testing, glass and soil testing, and serology and DNA typing

**Teaching Assistant**

*November, 2004 – November 2005*

**University of Florida**

Gainesville, FL

- ◇ Teaching Assistant for the online Master of Science in Forensic Science program with UF
- ◇ Graded papers, tests, and quizzes and answered students questions in the Forensic DNA course

**Crime Laboratory Analyst**

*May, 2002 – November, 2005*

**Florida Department of Law Enforcement**

Tampa, FL

- ◇ Received complete training in serological testing techniques
- ◇ Performed serology and STR DNA testing on evidence submitted by agencies in 18 counties
- ◇ Utilized Profiler Plus and COfiler amplification kits with analysis on ABI 310, AB 3100 and AB 3130
- ◇ Attended crime scenes when requested
- ◇ Provided training to investigators and attorneys on Forensic Serology and DNA capabilities
- ◇ Attended Cold Case Squad meetings to answer biological evidence-based questions
- ◇ Wrote case reports based upon findings and testified in court as an expert witness when needed

**Forensic DNA Analyst 2**

*January, 1999- May, 2002*

**The Bode Technology Group, Inc.**

Springfield, VA

- ◇ Received training in STR DNA typing techniques
- ◇ Received Top Secret security clearance and performed DNA testing as part of a federal government contract
- ◇ Performed STR DNA testing on evidence and reference samples
- ◇ Utilized PowerPlex 1.1, 2.1, Profiler Plus and COfiler amplification kits with electrophoresis performed on the FMBIO II or ABI 377 followed by analysis with STaRCaLL software or GeneScan/Genotyper
- ◇ Managed a project in conjunction with the International Commission on Missing Persons to identify remains found in mass graves in Bosnia
- ◇ Assisted with mass disaster identification projects such as the Alaska Air flight 261 crash in 2000 and the World Trade Center disaster on 09/11/01
- ◇ Testified in court as an expert witness when needed

**EXPERT WITNESS TESTIMONY:**

Qualified as an expert in Serology and/or Forensic DNA Analysis in the following States: California (in Fresno, Kern, Los Angeles, Orange (State and Federal), Placer, San Diego (State and Federal), Santa Clara, Imperial, Monterey, Siskiyou and Ventura Counties), Idaho, Maryland, Rhode Island (Superior and Supreme Court), Texas (Superior and Military Court), Washington (Seattle and Walla Walla), Iowa, Connecticut (Federal Court), Arizona (Maricopa County Superior and Juvenile Court), New York (Federal and Military Court), Wisconsin, Washington, D.C. (Military Court), and Florida (in Alachua, Polk, Pinellas, Pasco, Duval, Citrus, Sarasota, Hillsborough, Hernando, Highlands, Collier, Lee, and Charlotte Counties and Federal Court in Tampa) and in Kaiserslautern, Germany (Military Court) for a total of over 100 times, as well as more than 20 expert deposition experiences in both civil and criminal trials.

**CONTINUING EDUCATION/TRAINING:**

1. Statistics Seminar, The Bode Technology Group, Inc. December 2000
2. Third Annual Fluorescent STR MegaPlex Technology Workshop, Hilton Head, NC. March 2000
3. ABI Prism 377 DNA Sequencer training given by Applied Biosystems at The Bode Technology Group, April 2000
4. STR Analysis Seminar, The Bode Technology Group, November 2000
5. American Academy of Forensic Sciences 53<sup>rd</sup> Annual Meeting, Seattle, WA. February 2001
6. DNA STR Workshop, Northeastern Association of Forensic Scientists 28<sup>th</sup> Annual Meeting, Atlantic City, NJ. November 2002
7. Florida Dept. of Law Enforcement Forensic Biology Discipline Meeting, Tampa, FL March 2003
8. Introduction to Bloodspatter Analysis Training, Florida Dept. of Law Enforcement, Tampa, FL February 2004
9. NIJ's 5<sup>th</sup> Annual DNA Grantee's Workshop, Washington, D.C. June 2004
10. SAFS/MAAFS/MAFS/CFC Combined Meeting & Paternity Statistics Workshop, Orlando, FL September 2004
11. MAAFS annual meeting & LCN Workshop, Richmond, VA May 2006
12. ABI Future Trends in Forensic DNA Technology, Research Triangle Park, NC May 2006
13. FBI Auditor Training Course, National Forensic Science Technology Center, Largo, FL, June 2006
14. Forensic Consultants Association Annual Meeting, - "New Developments in Forensic DNA Testing", San Diego, CA, December 2006.
15. California Association of Crime Laboratory Directors Spring 2007 Meeting, Temecula, CA, April 2007
16. FBI DNA Auditor Refresher Training and Annual Training for Grant Progress Assessment (GPA) Assessors, Washington DC, June 2007
17. American Academy of Forensic Sciences 60<sup>th</sup> Annual Meeting, Washington, DC. February 2008
18. National Forensic Science Training Center DNA Mixture Interpretation Workshop, online training, October 2011
19. Advanced DNA Mixture Interpretation and Statistical Approaches Workshop. American Academy of Forensic Sciences 64<sup>th</sup> Annual Meeting, Atlanta, GA. February 2012
20. Transforming Investigative Potential - DNA Technology Today. Held at DNA:SI Lab, Burlington, NC. August 2012
21. Tenth Annual Advanced DNA Technical Workshop sponsored by Bode Technology, San Diego, CA March 2013
22. First Annual American Investigative Society of Cold Cases Conference, Fayetteville, NC. May 2014
23. Promega 25th International Symposium on Human Identification and Probabilistic Software Workshop, Phoenix, AZ. October 2014
24. Implementing Next Generation Sequencing for Forensic DNA Analysis. Webinar presented by Forensic Magazine and Battelle. June 2015
25. Second Annual American Investigative Society of Cold Cases Conference, St. Louis, MS. July 2015.
26. MSI M-Vac Systems training given by Jared Bradley of MSI at Advanced Serology Laboratory, Carlsbad, CA. November 2015
27. American Academy of Forensic Sciences 68th Annual Meeting, Las Vegas, NV. February 2016
28. Third Annual American Investigative Society of Cold Cases Conference, St. Louis, MS. July 2016
29. American Academy of Forensic Sciences 69th Annual Meeting, New Orleans, LA. February 2017
30. DNA Standards and Guidelines. Webinar presented by ASCLD. April 2017
31. QuantStudio 5 Real-Time PCR System installation training given by ThermoFisher Scientific at Pure Gold Forensics. August 15, 2017.
32. California Association of Criminalists Fall Seminar, DNA Workshop, Newport Beach, CA. September 2017

**PUBLICATIONS AND PRESENTATIONS:**

- ◇ Eleni N, Levedakou, Freeman, D.A., Budzynski, M.J., Early, B.E., Damaso, R.C., Pollard, A.M., Townley, A.J., Gombos, J. L., Lewis, J.L., Kist, F.G., Hockensmith, M.E., Terwilliger, M.L., Amiot, E., McElfresh, K.C., Schumm, J.W., **Ulery, S.R.**, Konotop, F., Sessa, T.L., Sailus, J.S., Crouse, C.A., Tomsey, C.S., Ban, J.D., and Nelson, M.S. Characterization and Validation Studies of PowerPlex 2.1, a Nine-Locus Short Tandem Repeat (STR) Multiplex System and Penta D Monoplex, *Journal of Forensic Sciences*, July 2002.
- ◇ **Ryan, S.R.** and Kelepecz, B.K., "DNA on Guns; How Do You Preserve the Evidence?", *Law Officer Magazine*, pp 48- 51 Vol. 4 (9) September 2008.
- ◇ Ryan, S.R., "Using DNA to Solve Cold Cases", [www.LawOfficer.com](http://www.LawOfficer.com), July 15, 2008.
- ◇ Ryan, S.R., "Maximize the Usefulness of Sexual Assault Kit Evidence", [www.LawOfficer.com](http://www.LawOfficer.com), August 19, 2008.
- ◇ Ryan, S.R., "Y Chromosome DNA Testing", [www.LawOfficer.com](http://www.LawOfficer.com), September 16, 2008.
- ◇ Ryan, S.R., "Familial DNA Searching", [www.LawOfficer.com](http://www.LawOfficer.com), October 21, 2008.
- ◇ Ryan, S.R., "Mini-STR Technology", [www.LawOfficer.com](http://www.LawOfficer.com), November 20, 2008.
- ◇ Ryan, S.R., "The DNA Database Problem", [www.LawOfficer.com](http://www.LawOfficer.com), December 16, 2008.
- ◇ Ryan, S.R., "Transfer Theory in Forensic DNA Analysis", [www.LawOfficer.com](http://www.LawOfficer.com), January 20, 2009.
- ◇ Ryan, S.R., "Latent Prints or DNA?", [www.LawOfficer.com](http://www.LawOfficer.com), February 17, 2009
- ◇ Ryan, S.R. "Understanding DNA Evidence; Why It Is Important To Do a Case Review", presented at the National Defender Investigator Association, West Regional Conference, September 17, 2009.
- ◇ Ryan, S.R. "Defense Attorney's Guide to Forensic Serology and DNA Analysis" presented to the San Diego Public Defender's Office, Vista, California, October 21, 2009.
- ◇ Ryan, S.R. "DNA: Get It Right", *Law Officer Magazine*, pp. 28-29 Vol. 5 (11) November 2009.
- ◇ Ryan, S.R., "The Defense Investigator and Paralegal's Guide to Forensic Serology and DNA Analysis" presented at the National Defender Investigator Association National Conference, April 9, 2010.
- ◇ Ryan, S.R. "Understanding DNA Evidence: Analysis Through Interpretation and Beyond" presented for CLE credit to the Kern County Public Defender's Office, November 11, 2011.
- ◇ Ryan, S.R. "DNA Testing and Mixture Interpretation: an Overview of DNA Analysis & Discussion of the 2010 SWGDAM Guidelines" presented for CLE credit to the Orange County Alternate Defender's Office, February 29, 2012.
- ◇ Ryan, S.R., "Touch DNA Analysis: Using the Literature to Help Answer Some Common Questions", *Forensic Magazine*, pp. 31-33 Vol. 9 (3) June/July 2012.
- ◇ Ryan, S.R., "Investigative Potential: Using Touch DNA to Generate Leads", presented at the Transforming Investigative Potential - DNA Technology Today conference held at DNA:SI Labs in Burlington, NC. Aug. 2012
- ◇ Ryan, S.R., "The Value and Collection of Touch DNA and Potential Investigative Pitfalls", presented at the LODIS Users Group Meeting held in Palm Bay. December 4, 2012
- ◇ Ryan, S.R., "Identifying, Collecting, and Packaging DNA Evidence", presented to the Palm Bay Police Department, Palm Bay, FL. December 4, 2012
- ◇ Ryan, S.R., "Cold Case DNA Evidence - The Progresses and Perils", presented at the First Annual American Investigative Society of Cold Cases Conference held in Fayetteville, NC. May 2014.
- ◇ Ryan, S.R. "Creative Uses of DNA in Cold Cases and Recent Advances in the Field of Forensic DNA Analysis", presented at the Second Annual American Investigative Society of Cold Cases Conference held in St. Louis, MS. July 2015.
- ◇ Ryan, S.R. Advances in forensic DNA analysis: A brief review. *Journal of Cold Case Review*. Vol.1(1), July 2015.
- ◇ Ryan, S.R., "Defending Against Potentially Inculpatory Sexual Assault Kit Evidence", presented at the National Defender Investigator Association Regional Conference held in Las Vegas, NV. September 10, 2015.
- ◇ Ryan, S.R., "Understanding and Interpreting DNA Results", presented at the National Defender Investigator Association Regional Conference held in Las Vegas, NV. September 10, 2015.
- ◇ Ryan, S.R., "A Guide to Understanding and Interpreting DNA Results" and "Forensic DNA Experts", presented at the National Defender Investigator Association Regional Conference held in Newport Beach, CA, September 8-9, 2016.
- ◇ Ryan, S.R. "Forensic Serology and DNA: An Overview for Officers" and "Using DNA to Solve Cold Cases" presented at the Cold Case Homicide Seminar, Myrtle Beach, SC. February 10, 2017.
- ◇ Kadash, K. Plourd, CJ, Hunt, TR, Connors, K. **Ryan, SR**, Cotton, R. "DNA Testimony in the Past, Present, and Future". Panel presentation at the 69th Annual AAFS Conference, New Orleans, LA. February 17th, 2017
- ◇ Ryan, S.R. "DNA Discoveries: Using New DNA Techniques to Help Solve Cold Cases" presented at the Fourth Annual American Investigative Society of Cold Cases Conference held in St. Louis, MS. June 26-27th, 2017.
- ◇ Ryan, S.R. "Forensic Serology and DNA: An Overview for Officers" and "Using DNA to Solve Cold Cases" presented at the Cold Case Homicide Seminar, Myrtle Beach, SC. February 9, 2018.

## PROFESSIONAL ASSOCIATIONS AND CERTIFICATIONS:

- ◇ American Academy of Forensic Sciences 1997-present
- ◇ Certified as a Diplomate in Molecular Biology - American Board of Criminalistics, 2012
- ◇ Selected as a Member of the Review Board of the American Investigative Society of Cold Cases, 2013 - present
- ◇ Associate Member California Association of Criminalists 2015-present

## AWARDS:

- ◇ Awarded the 2004 Davis Productivity Award from the State of Florida
- ◇ Awarded a Commendation from the Sarasota Police Department for Outstanding Assistance in the 2004 Wishart Murder Investigation, March 2005
- ◇ Awarded a Certificate of Appreciation for Outstanding Contributions in the Field of Drug Law Enforcement by the Drug Enforcement Agency, April 2007

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

|                          |   |                     |
|--------------------------|---|---------------------|
| THE STATE OF WASHINGTON, | ) | No. 81054-5-I       |
|                          | ) |                     |
| Respondent,              | ) |                     |
|                          | ) | DIVISION ONE        |
| v.                       | ) |                     |
|                          | ) |                     |
| ROBERT LEE FREEMAN,      | ) |                     |
|                          | ) | UNPUBLISHED OPINION |
| Appellant.               | ) |                     |
| _____                    | ) |                     |

MANN, C.J. — Robert Freeman appeals the trial court’s order denying his motion for postconviction deoxyribonucleic acid (DNA) testing, alleging that new testing would show his innocence. We affirm.

**FACTS**

A.F.’s mother, Virginia Freeman married Freeman<sup>1</sup> when A.F. was six years old. Freeman is not A.F.’s biological father. Freeman would frequently come into A.F.’s room and rub her back while she slept. When A.F. was in fourth grade, Freeman began to touch her inappropriately under her clothing. More than half the time, Freeman would digitally penetrate A.F.

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<sup>1</sup> Because the individuals have the same surname, Virginia will be referred to by her first name to avoid confusion.

A.F. disclosed the molestation to a few friends. In 1999, when A.F. was fifteen years old, she told Virginia about the abuse. Virginia confronted Freeman, who denied touching A.F. Neither A.F. nor Virginia reported the molestation to police at the time. Virginia reported the incidents to the police on September 17, 2001, after reporting a domestic violence assault by Freeman.

Virginia previously discovered small stains in the carpet around A.F.'s bed. In 1999, after A.F. disclosed the abuse to her, Virginia found a teddy bear with similar stains on A.F.'s bed. Virginia put the teddy bear in a backpack and hid it. During the police investigation of A.F.'s abuse, a detective took carpet samples from A.F.'s bedroom and the teddy bear.

Freeman, Virginia, and A.F. provided DNA samples for DNA testing. The carpet samples and teddy bear were indicative of semen and matched Freeman's DNA. When detectives asked Freeman why his semen was found in A.F.'s room, he said that it could have slipped off Virginia after Freeman and Virginia had sexual intercourse. The teddy bear sample was a "pure male profile," matching Freeman without the presence of any other individuals. The carpet samples matched Freeman and A.F. Virginia's DNA was not biologically present in the carpet samples.

A.F. testified at trial. Freeman was convicted of three counts of rape of a child and three counts of child molestation.<sup>2</sup> Freeman appealed, alleging ineffective

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<sup>2</sup> Specifically, Freeman was convicted of one count each of the following crimes: rape of a child in the first degree, rape of a child in the second degree, rape of a child in the third degree, child molestation in the first degree, child molestation in the second degree, and child molestation in the third degree.

assistance of counsel, and this court affirmed his convictions.<sup>3</sup> Freeman filed numerous collateral attacks, all of which were denied.

In 2018, Freeman moved to dismiss his charges under a writ of coram nobis or under CrR 8.3 for the governmental mismanagement of the DNA evidence. In the alternative, he requested postconviction DNA testing under RCW 10.73.170.

The superior court transferred Freeman's motion to this court as a personal restraint petition. We remanded Freeman's request for postconviction DNA testing to the trial court that entered the judgment of conviction. We dismissed the remainder of Freeman's petition as untimely. The trial court denied the motion for postconviction DNA testing, finding that Freeman failed to show that a favorable result would demonstrate his innocence by a more probable than not basis, because Freeman did not contest the DNA as his. Freeman appeals.

#### ANALYSIS

Freeman argues that the court erred by denying his motion for DNA testing, contending that new DNA testing would support his innocence. We disagree.

"We review a trial court's decision on a motion for postconviction DNA testing for abuse of discretion." State v. Gentry, 183 Wn.2d 749, 764, 356 P.3d 714 (2015). The court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. State v. Rafay, 167 Wn.2d 644, 655, 222 P.3d 86 (2009). Under RCW 10.73.170(2)(a)(iii), a person convicted of a felony who is currently serving a sentence may request DNA testing if the testing is "significantly more accurate than prior DNA testing or would provide significant new information." The petitioner meets

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<sup>3</sup> See State v. Freeman, No. 53169-7-I (Wash. Ct. App. Jan. 24, 2005) (unpublished).

their substantive burden by demonstrating that the DNA evidence would prove their innocence on a more probable than not basis. RCW 10.73.170(3). “The statute requires a trial court to grant a motion for postconviction testing when exculpatory results would, in combination with the other evidence, raise a reasonable probability the petitioner was not the perpetrator.” State v. Riofta, 166 Wn.2d 358, 367-68, 209 P.3d 467 (2009). The court considers the evidence from trial along with any newly discovered evidence, as well as considering the impact a favorable DNA result could have in light of that evidence. Riofta, 166 Wn.2d at 369. The court must assume a favorable test result when considering a request for DNA testing. State v. Crumpton, 181 Wn.2d 252, 264, 332 P.3d 448 (2014).

Freeman contends that a favorable result would not be the absence of his DNA in the sample, but the presence of Virginia’s DNA to support his explanation. He relies on State v. Braa, 2 Wn. App. 2d 510, 520, 410 P.3d 1176 (2018), where this court held that postconviction DNA testing was relevant to a petitioner claiming self-defense, but that the petitioner ultimately could not establish that DNA testing would establish his innocence on a more probable than not basis. Freeman’s argument that postconviction DNA testing is available to support an alternative theory, like self-defense, has merit in the context of his argument that his DNA was present in A.F.’s room for an innocent reason. However, Freeman still fails to establish that a favorable DNA result—the presence of Virginia’s DNA in the samples—would establish his innocence by a more probable than not basis.

In State v. Thompson, 173 Wn.2d 865, 875, 271 P.3d 204 (2012), our Supreme Court held that when the victim had intercourse with only one individual, her rapist, on



the night of the attack, postconviction DNA testing should have been granted. The court reasoned that if the DNA tests excluded the convicted petitioner, who claimed innocence, it is more probable than not that his innocence would be established. Thompson, 173 Wn.2d at 875. Similarly in Crumpton, the Supreme Court held that postconviction DNA testing should have been granted in a rape case where the petitioner claimed innocence, because “DNA evidence that does not match the convicted individual is extremely persuasive of that person’s innocence.” 181 Wn.2d at 263.

Unlike Thompson and Crumpton, Freeman does not claim that new DNA testing would show that the semen in A.F.’s room was not his. Rather, he argues for testing to lend credibility for his theory that his semen fell off Virginia when she checked on A.F. after intercourse. However, A.F. testified in detail about sexual abuse she suffered, identifying her stepfather, Freeman, as the perpetrator. Neither victim in Thompson or Crumpton was able to make a definitive identification of their attacker.

Even if new DNA testing were to show Virginia’s DNA present, Freeman is still unable to establish that this result is more probable than not to show his innocence. Virginia lived in the home, and was frequently in her daughter’s room, therefore, her DNA could be present in the carpet samples. Ultimately, the jury heard Freeman’s argument about the innocent explanation of his semen in A.F.’s room and rejected that argument. When considering the other evidence from trial, there is not a reasonable probability that Freeman was not the perpetrator.<sup>4</sup>

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<sup>4</sup> Freeman submitted a statement of additional grounds, in which he challenged finding 3: “DNA testing performed and presented to the jury at trial established that DNA found in swabs from the teddy bear and carpet samples from A.F.s bedroom matched the defendant’s DNA.” Substantial evidence in

Affirmed.

Mann, C.J.

WE CONCUR:

Chun, J.

Smith, J.

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the record supports this finding, therefore, Freeman's argument has no merit. Blackburn v. State, 186 Wn.2d 250, 256, 375 P.3d 1076 (2016).

Freeman also argues that he is entitled to a dismissal under CrR 8.3(b) due to alleged mishandling of evidence by police, that the alleged mishandling of evidence constitutes a Brady violation, and prosecutorial misconduct. Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). These issues are time barred by RCW 10.73.090. He also argues that the trial court should have heard his motion for the writ of coram nobis. This court has already dismissed the writ of coram nobis.

# INMATE

September 13, 2021 - 8:45 AM

## Transmittal Information

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**Appellate Court Case Number:** 81054-5  
**Appellate Court Case Title:** State of Washington, Respondent v. Robert Lee Freeman, Appellant

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