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NO. 36405-4-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Appellant,

v.

GRANT MCADAMS,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

BRIEF OF RESPONDENT

KATE R. HUBER
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
katehuber@washapp.org
wapofficemail@washapp.org

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A. INTRODUCTION

Grant McAdams is currently serving an eighteen year sentence for assault and robbery. No evidence was ever tested for DNA. With the support of the Washington State Patrol Crime Laboratory, Mr. McAdams moved for DNA testing of relevant evidence recovered from the crime scene and the victim as a first step towards establishing his innocence. Mr. McAdams qualifies for testing under RCW 10.73.170 and satisfied all of the procedural and substantive requirements. The court, following the mandatory standard of the statute, granted his motion and ordered testing.

This Court should dismiss the State's appeal because RAP 2.2(b) creates no right for the State to appeal from an order granting a motion for postconviction DNA testing, and the State's arguments fail to justify discretionary review. In the alternative, the State fails to prove the court abused its discretion in granting the order, and this Court should affirm the order in its entirety. Mr. McAdams established testing would provide significant new information, is material to the identity of the perpetrator, and that presumed favorable DNA results would more likely than not demonstrate his innocence. In addition, neither the statute nor case law impose an obligation on the court to issue findings in conjunction with such an order. Therefore, the court properly granted the motion and ordered testing. This Court should affirm.

B. STATEMENT OF THE ISSUES

1. The Rules of Appellate Procedure (RAPs) limit the ability of the State to appeal decisions in criminal matters to those decisions specifically identified in the rules. An order granting a motion for postconviction DNA testing is not included in RAP 2.2(b) as a decision the State may appeal. This Court should dismiss the State's appeal where the decision is not appealable as a matter of right by the State and where discretionary review is unwarranted.

2. RCW 10.73.170 requires courts to grant a defendant's motion for postconviction DNA testing where the defendant is convicted of a felony, serving a term of imprisonment or community custody, and submits a motion that satisfies both the procedural and substantive prongs. The statute creates no option for a court to deny the motion if the requirements are met. The court acted reasonably in granting the motion for testing where Mr. McAdams is a qualifying defendant who met both the procedural and substantive requirements of the postconviction testing statute.

3. RCW 10.73.170 imposes no obligation on the court to enter findings of fact or conclusions of law and does not authorize a judge to exercise discretion but instead mandates the court to grant the motion for testing where the movant satisfies the procedural and substantive

requirements. Here, the record before the trial court and this Court establishes Mr. McAdams satisfied all the requirements. This Court should affirm the order and reject the State's argument that the court abused its discretion by failing to enter specific findings where neither the statute nor case law require the court to enter findings and the State has identified no authority supporting such a requirement.

4. RCW 10.73.170 requires a defendant to show that the requested DNA testing would provide significant new information. The statute does not require the defendant to prove testing will, in fact, result in a developed DNA profile, nor does it require the court to predict the likelihood that DNA testing will actually yield a useful profile. Because Mr. McAdams demonstrated the requested tests would provide significant new information, this Court should affirm the order.

5. RCW 10.73.170 requires courts to presume requested testing will uncover DNA results favorable to the defendant, and the defendant must show the presumed favorable results, considered with other evidence, would demonstrate his innocence on a more probable than not basis. Here, the court ordered testing of the weapon that the perpetrator used to assault the victim, the victim's clothing that witnesses saw the perpetrator grab during the attack, and various other items recovered from the crime scene. The court properly applied the statute and the required

presumption of favorable DNA results to find Mr. McAdams demonstrated a reasonable probability of innocence, and this Court should affirm the order.

C. STATEMENT OF THE CASE

1. Mr. McAdams is convicted of assault and robbery for a crime in which no evidence was ever tested for DNA.

On May 9, 2011, Mr. Salih gave a ride to a stranger he encountered at the payphone outside a 7-Eleven store. 2 RP¹ 257-58. Mr. Salih had never seen the man before. 2 RP 258. After driving a couple of blocks, the stranger told Mr. Salih to stop the car. 2 RP 260. He then grabbed a tire iron and repeatedly hit Mr. Salih in the head with it. 2 RP 261-63. The stranger chased Mr. Salih out of and around the car and down the street, still hitting him in the head with the tire iron. 2 RP 262-63. At some point, the stranger grabbed Mr. Salih by his coverall jeans. 3 RP 399; CP 72, 75, 84. During the attack, the stranger referred to a male friend of Mr. Salih's ex-wife, making Mr. Salih believe the attack was related to an ongoing family matter. 2 RP 263-64, 269-70; CP 102; 1 RP 98-99, 103-05. After several neighbors approached the attack, the stranger

¹ The transcript from the trial, held June 4-12, 2012, followed by a July 19, 2012, sentencing, is referred to by the volume number (1-5) RP and page number. Volume number 5 contains the second part of June 7, 2012, testimony and chronologically follows volume number 3, not 4. The transcript from the postconviction DNA testing motion argument is referred to by the date (09/15/17) RP and page number.

ran back to Mr. Salih's car and drove away. 1 RP 74-75, 83-88, 98-102; 3 RP 399-403.

Police found Mr. Salih's car the day after the incident. 2 RP 174-75, 202. The car was parked on a street, the doors were unlocked, the windows were open, and the key was in the ignition. 2 RP 174-75. Technicians who processed the interior and exterior of the car for prints discovered a palm print on the exterior of the driver's side door which they testified belonged to Mr. McAdams. 2 RP 226, 285-87. The technicians developed other finger and palm prints from both the interior and exterior of the car. 2 RP 300-01. All other developed prints either belonged to Mr. Salih or belonged to an unidentified individual.² 2 RP 300-01, 309. No prints belonged to Mr. McAdams other than the palm print on the exterior of the driver's door.

Based on the palm print on the exterior of the car door, police put Mr. McAdams's photograph in a six-person photo montage. 2 RP 226; CP 131 (Mr. McAdams is number five in the montage). Three days after the incident, police showed the montage to four people in the neighborhood who witnessed the attack.³ 2 RP 226-31, 240-42. None of the four

² In addition, technicians were unable to develop some prints due to insufficient quality. 2 RP 309-10.

³ A fifth witness, who testified he "didn't really get a good look" at the attacker, never viewed the photo montage, nor was he asked to identify anyone in court. 1 RP 103-04.

witnesses identified Mr. McAdams as the attacker. 1 RP 80, 2 RP 228-29, 242 (Melcher); 2 RP 228, 241-42, 3 RP 404-05 (Brown); 2 RP 229, 242 (Kramer); 2 RP 228-29 (Holec). Three of them affirmatively stated the attacker looked like someone else in the montage. 2 RP 229 (Melcher: “Looks like two or three.”); 2 RP 242 (Brown: “Looks like these guys, number one or three. More like number three.”); 2 RP 242 (Kramer: “Kind of looks like this guy,’ points to number six.”).⁴ None of the eyewitnesses identified Mr. McAdams as the attacker.

Police collected multiple items from the vehicle for the purpose of trying “to determine who the person was who assaulted Mr. Salih.” 2 RP 202. The police collected those items they believed would help identify the attacker by selecting items they could potentially test to see if the attacker “handled” them. 2 RP 210. In explaining to the jury why the police collected certain object, the lead detective responded to the prosecutor’s question, “What is your purpose for collecting those pieces of evidence?” by explaining they were “Trying to determine if the suspect handled or brought something with him into the vehicle and to attempt to get fingerprints from those items to identify who that is.” 2 RP 210.

⁴ In addition, the fourth witness, who did not testify, stated, “Guy had hair like this or this, pointing to number five or number two.” 2 RP 229 (Holec).

The police retrieved the tire iron the attacker used to beat Mr. Salih from the front passenger seat of the car. 2 RP 206, 208; CP 78. In addition to the assault weapon itself, the police collected as evidence multiple other items they found in the car that they believed the attacker may have touched from both the interior of the car and the trunk. 2 RP 210; CP 75-79. In processing the car, the police took care to handle the items so as not to contaminate them.⁵ 2 RP 203, 210-15. Finally, the police also collected the clothing Mr. Salih was wearing, including his coverall jeans which the attacker grabbed hold of while attacking Mr. Salih. 3 RP 399; CP 72, 75, 84.

In addition, technicians identified and lifted other finger and palm prints from both the interior and exterior of the car. 2 RP 300-01, 309-10. Of the prints that were sufficiently clear to process, several prints were identified that did not match Mr. McAdams or Mr. Salih and were from an unknown person. No DNA testing was conducted on any item in this case. CP 34, 47; 2 RP 212.

At trial, two of the witnesses, both of whom previously did not identify Mr. McAdams as the attacker when they viewed the photo montage immediately after the attack, changed their identification and

⁵ In addition, at trial the detective explained and demonstrated how he handled the tire iron, the only physical evidence introduced at trial, in a manner that was taken with care to avoid contamination. 2 RP 186-87, 213-15.

identified him in court. 1 RP 76 (Melcher); 1 RP 91 (Kramer). A third witness maintained his original nonidentification and again testified in court that Mr. McAdams was not the attacker. 3 RP 406 (Brown). Another witness was unable to identify anyone. 1 RP 103-04. The last witness to the attack, who did not identify Mr. McAdams in the photo montage, did not testify at trial. 2 RP 228-29 (Holec). Finally, Mr. Salih identified Mr. McAdams at trial. 2 RP 265. He also identified Mr. McAdams in the photo montage police showed him eight days after the attack while he was in a rehabilitation center to treat his ongoing head trauma and extensive memory problems. 2 RP 238.

Mr. McAdams introduced evidence he was working on the day of the attack and could not have been present at the attack location at the time of the attack. 3 RP 347-53; CP 97. The jury nevertheless convicted Mr. McAdams of assault and robbery. 4 RP 534-37. The court sentenced Mr. McAdams to eighteen years' imprisonment. 4 RP 564-65.

2. The Washington State Patrol Crime Laboratory supports Mr. McAdams's motion for postconviction DNA testing, and the court grants the motion and orders DNA testing.

Six years after the crime, Mr. McAdams moved for postconviction DNA testing. CP 6-21, 34-388. Mr. McAdams sought DNA testing of the assault weapon itself and of some of the items police collected that they believed would help identify the perpetrator. The evidence of which Mr.

McAdams sought testing included several items retrieved from inside of the car, several items retrieved from the trunk of the car, some of the print lifts from the car, and clothing recovered from Mr. Salih's person and from the trunk of his car. CP 37-38, 51-56.

The Washington State Patrol Crime Laboratory Division (WSPCLD) supported Mr. McAdams's motion for postconviction DNA testing. CP 67-73. Scientist Philip Hodge submitted a declaration briefly outlining the evolution of DNA testing technology and addressing some of the items proposed for testing.

Mr. Hodge explained how current DNA capability permits testing "minute . . . and partially degraded samples." CP 68. Mr. Hodge also outlined a brief history of DNA technology and explained the increasing discriminatory power of newly developed testing procedures. CP 69-71. In particular, Mr. Hodge discussed one of the most recent DNA technologies that the lab employs. CP 70. This particular testing kit, Fusion 6C, has been available at the lab only since January 2017, long after the date of the incident in this case. CP 70. Scientist Hodge explained the testing's highly discriminatory abilities enable the lab to use it for cases with particularly "difficult, degraded or mixed samples" containing DNA from multiple people. CP 71.

In addition to offering a brief history of DNA testing and explaining recent advances, Mr. Hodge declared he had specifically reviewed the records in Mr. McAdams's case. CP 71-73. Mr. Hodge asserted, based on the manner in which the assault weapon was handled, "Modern DNA testing could develop a DNA profile from swabbing the tire iron." CP 72. Scientist Hodge also endorsed testing of the victim's jean coveralls that witnesses saw the perpetrator grab. CP 72. In addition to specifically confirming the viability of DNA testing on the tire iron and jean coveralls, Mr. Hodge generally addressed some of the items recovered from Mr. Salih's car and person and concluded that DNA testing was possible and could "reveal the identity of the perpetrator." CP 72.

The court reviewed extensive briefing on the motion and held oral arguments. CP 1-22, 34-388; 09/15/17 RP 1-26. The court granted Mr. McAdams's motion and ordered testing. CP 22-26. Although the court granted the motion in its entirety, the court specified in the order that the crime lab is to assess the suitability and propriety of testing items after it has the opportunity to examine the items following their transfer to the lab. CP 24.

WSPCLD shall determine whether the evidence subject to this order is suitable for DNA testing and, if any material is suitable for testing, WSPCLD shall determine the order and

method of testing, as well as conducting, scheduling or arranging for testing as appropriate.

CP 24. Thus the court's order is ultimately subject to the expertise of the crime lab in determining which items are appropriate for testing after lab technicians are able to view the objects.

The State appealed the court's order. CP 27-33. Commissioner Wasson denied the State's motion for a stay pending appeal. November 19, 2018, Ruling.

D. ARGUMENT

1. A court's order granting a motion for postconviction DNA testing under RCW 10.73.170 is not a decision appealable as a matter of right by the State; therefore, this Court should dismiss the State's appeal.

a. RAP 2.2(b) governs appeals by the State in criminal cases.

Parties may only seek appellate review of a superior court's decision where authorized to do so by the Rules of Appellate Procedure. RAP 2.2 identifies which superior court decisions a party may seek review by direct appeal. RAP 2.2; *see also* RAP 2.1(a) (defining "decision" as "rulings, orders, and judgments of the trial court"). The rule identifies different appealable decisions for different parties. Subsection (a) identifies appealable decisions for civil litigants and criminal defendants. RAP 2.2(a) (identifying appealable decisions for "a party" "except as provided in subsections (b) and (c)"). Subsection (b) identifies appealable

decisions for the State in any criminal case. RAP 2.2(b) (identifying appealable decision for “the State or a local government”).

“An appeal by the state does not lie from the ruling of a lower court in a criminal case, unless authorized by constitution or statute.” *Spokane County v. Gifford*, 9 Wn. App. 541, 542, 513 P.2d 301 (1973) (citing *State v. Johnson*, 24 Wn. 75, 63 P. 1124 (1901) and *State v. Brent*, 30 Wn.2d 286, 291, 191 P.2d 682 (1948)); Const. art. IV, § 30 (granting jurisdiction to appellate courts and authorizing review “as provided by statute or by rules authorized by statute”). Therefore, the State may only appeal from a decision where the constitution, statute, or court rule specifically authorizes it to do so.

RCW 10.73.170 does not provide a right to appeal to either party. Therefore, RAP 2.2(b) creates the exclusive grant of the right to appeal for the State. In addition to the title of the subsection, “Appeal by State or a Local Government in Criminal Case,” the text of the rule makes clear that it provides the exclusive basis of the State’s right to appeal: “the State or a local government may appeal in a criminal case **only** from the following superior court decisions.” RAP 2.2(b)⁶ (emphasis added). RAP 2.2(b)(1),

⁶ RAP 2.2(b)(2)-(6) identify other specific orders from which the State may appeal, none of which are relevant here.

identifying certain “Final Decision, Except Not Guilty,” from which the State may appeal, provides:

[T]he State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

RAP 2.2(1)(b). Thus, RAP 2.2(b)(1) lists the “only” final decisions from which the State may appeal in a criminal case.

b. RAP 2.2(b) does not authorize the State to appeal a court’s order granting a motion for testing under RCW 10.73.170.

RAP 2.2(b)(1) identifies the types of final decisions from which a State may appeal. It defines an appealable decision as one that “in effect abates, discontinues, or determines the case.” RAP 2.2(b)(1). It includes in an illustrative list of such decisions those decisions “setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).” RAP 2.2(b)(1). It does not include appeals from postconviction motions in general, nor does it

specifically include appeals from the particular postconviction motion for DNA testing, among the decisions the State may appeal.⁷

While RAP 2.2(b) contains an illustrative, not exclusive, list of decisions the State may appeal, the context of the rule exemplifies it applies only to final decisions akin to a dismissal. Basic rules of statutory construction require courts to interpret a rule in the context of the examples given. Canons of statutory interpretation apply to court rules as well as statutes. *State v. George*, 160 Wn.2d 727, 735, 158 P.3d 1169 (2007).

The principle of *noscitur a sociis* dictates that courts should not read words or phrases in isolation but should consider their meaning in association with the surrounding words or phrases. *State v. K.L.B.*, 180 Wn.2d 735, 740-42, 328 P.3d 886 (2014); *State v. Torres*, 198 Wn. App. 864, 883, 397 P.3d 900 (“Under the principle of *noscitur a sociis*, the meaning of words may be indicated or controlled by those with which they are associated.”), *review denied*, 189 Wn.2d 1022 (2017). Thus, in interpreting the sorts of decisions intended to be included in RAP

⁷ In the Commissioner’s Ruling denying the State’s motion for an emergency stay, entered before counsel was appointed, Commissioner Wasson applied RAP 2.2(a)(13) to find the State had the right to direct appeal of the order. Ruling, November 19, 2018, p.2-3. However, as explained here, RAP 2.2(b), not (a), governs the right to appeal by the State.

2.2(b)(1), courts must look to decisions similar to those identified in the illustrative list. *See State v. Flores*, 164 Wn.2d 1, 12-13, 186 P.3d 1038 (2008) (apply noscitur a sociis to limit nonexhaustive list).

In addition, in *State v. Larson*, the supreme court applied noscitur a sociis to find that illustrative, nonexhaustive lists are intended to limit, not expand, the scope of a statute. 184 Wn.2d 843, 849-51, 365 P.3d 740 (2015). The court found that, although the statute elevating retail theft to a more serious level contained an illustrative, not exhaustive list, the legislature provided the illustrative list as a way to limit the statute's scope to similar items.

In order to give meaning and effect to the examples the legislature chose to provide, we must interpret them as instructive examples that demonstrate the type and character of items that are included within the scope of the statute. Thus, we can reasonably infer that the examples were intended to limit the scope to similar items, rather than expand the scope to any item that could conceivably be used to overcome security systems.

Id. at 851.

The illustrative examples included in RAP 2.2(b) as the type of a final decision that “abates, discontinues, or determines the case” include “a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).” These are all examples of decisions in which the court's order deprives the

State of its ability to prosecute the defendant or to maintain the State's action against the defendant. Applying the principle of *noscitur a sociis*, an order granting testing is not similar to these sorts of decisions. A decision granting an order for testing is not an end in itself for the State. Such an order does not deny the State of its ability to prosecute the defendant, nor does it deprive the State of the conviction it already obtained against the defendant.

While an order denying the motion ends the action for *the defendant*, an order granting the motion ends nothing for the State. *See* RAP 2.2(a)(13); *State v. Thompson*, 155 Wn. App. 294, 298-99, 229 P.3d 901 (2010) (holding *the defendant* has a right to direct appeal of a final order denying motion for testing because such a decision is a "final order made after judgment that affects a substantial right" of the defendant), *aff'd*, 173 Wn.2d 865, 271 P.3d 204 (2012). Conversely, such an order does not deprive the State of the defendant's conviction.

In addition, courts must read the rule so no part of it is rendered superfluous. *K.L.B.*, 180 Wn.2d at 742. If RAP 2.2(b)(1) was meant to create the right for the State to appeal *any* final decision other than not guilty, it would not have included the illustrative list of those specific final decisions that terminate the case in a way that deprives the State of its ability to pursue or maintain a conviction against the defendant. In order

not to render the illustrative list superfluous, this Court should read the list to limit the types of final decisions.

In addition, the different language between the final decisions a defendant may appeal under RAP 2.2(a) and those final decisions the State may appeal under RAP 2.2(b) demonstrates the creation of different rights under each subsection. RAP 2.2(a)(13) provides that a defendant may appeal “[a]ny final order made after judgment that affects a substantial right.” RAP 2.2(b) creates no corresponding right to appeal on behalf of the State where a court’s order “affects a substantial right.” In addition, 2.2(a)(13) permits defendants to appeal *any* final order affecting substantial rights, unlike 2.2(b)(1) which contains qualifiers and an illustrative list limiting the types of final orders the State may appeal.

Finally, of the cases addressing RCW 10.73.170 appeals, only one case is a state’s appeal: *State v. Slattum*, 173 Wn. App. 640, 295 P.3d 788, *review denied*, 178 Wn.2d 1010 (2013). In *Slattum*, the State argued the defendant was not a qualifying defendant under RCW 10.73.170 because he was not currently incarcerated. The court affirmed the trial court’s order granting testing and held that current community custody reporting met the statute’s requirement that a convicted felon be serving “a term of imprisonment” in order to qualify for relief. *Id.* at 662. The opinion addresses only whether the defendant is a qualifying defendant under the

statute and does not consider the issue of the State's authority to appeal the order.

For all these reasons, RAP 2.2(b) does not authorize the State to appeal the court's order granting Mr. McAdams's motion for postconviction DNA testing. This Court should dismiss the appeal.

c. The State cannot demonstrate discretionary review under RAP 2.3 is justified.

Matters not appealable as a matter of right by direct review may be appealable by motion for discretionary review. RAP 2.3(a). Here, however, none of the considerations governing acceptance of discretionary review justify accepting review in this case. The court did not commit obvious error (RAP 2.3(b)(1)), the court did not commit probable error and the court's decision does not substantially alter the status quo or limit a party's freedom to act (RAP 2.3(b)(2)), the court did not so far depart from "the accepted and usual course of judicial proceedings" as to call for review by this Court (RAP 2.3(b)(3)), and the court did not certify a question of law (RAP 2.3(b)(4)). Indeed, where the relevant standard of review is abuse of discretion, as it is here, trial court decisions rarely justify the exercise of discretionary review under RAP 2.3(b). *See, e.g., In re Welfare of Lewis*, 89 Wn.2d 113, 116, 569 P.2d 1158 (1977) (order transferring juvenile to adult court not an abuse of discretion and therefore no probable error justifying discretionary review shown); *State v.*

Howland, 180 Wn. App. 196, 203-05, 321 P.3d 303 (2014) (order denying insanity acquitee’s petition for conditional release not an abuse of discretion and therefore no probable error or other reason meriting discretionary review). Thus, a request for discretionary review, in the alternative, should be denied.

2. The trial court’s decision was a reasonable exercise of discretion under RCW 10.73.170; therefore, this Court should affirm the order for postconviction DNA testing.

If this Court reaches the merits, it should affirm the trial court’s order. Appellate courts review orders determining motions for postconviction DNA testing for an abuse of discretion. *State v. Crumpton*, 181 Wn.2d 252, 257, 332 P.3d 448 (2014); *State v. Thompson*, 173 Wn.2d 865, 870, 271 P.3d 204 (2012).

A court abuses its discretion only when there is a clear showing the court’s decision is “manifestly unreasonable or based on untenable grounds,” *Thompson*, 173 Wn.2d at 870, or where “the decision rests on facts unsupported in the record or was reached by applying the wrong legal standard.” *Crumpton*, 181 Wn.2d at 257. “A decision is ‘manifestly unreasonable’ if the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take,’ and arrives at a decision ‘outside the range of acceptable choices.’”

Mitchell v. Washington State Inst. of Pub. Policy, 153 Wn. App. 803, 821-

22, 225 P.3d 280 (2009) (quoting *State v. Lewis*, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990) and *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

Here, the State argues the court abused its discretion in three ways. First, the State contends the court erred in not specifically entering findings in support of the order. Brief of Appellant (BOA) at 5. Second, the State argues the court erred in granting the order specifically with respect to testing of the fingerprint lifts because it claims such testing will not provide significant new information. BOA at 5-7. Third, the State asserts the court erred in granting the order in its entirety because it alleges the requested testing lacks the potential to prove Mr. McAdams innocent. BOA at 7-10. The State is wrong on all three arguments. The court did not abuse its discretion in granting the order, and this Court should affirm.

- a. RCW 10.73.170 requires a court to grant a motion for postconviction DNA testing where the defendant qualifies under the statute and satisfies the procedural and substantive prongs.

RCW 10.73.170 *requires* a court to grant a motion for postconviction DNA testing where a qualifying defendant⁸ meets both the procedural and substantive prongs of the statute. “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.” RCW 10.73.170(3) (emphasis added).

The procedural prong requires a movant to state the requested DNA testing “would provide significant new information” and explain “why DNA evidence is material to the identity of the perpetrator.” RCW 10.73.170(2)(a)(iii), (b)⁹. The substantive prong requires the movant show “the likelihood that the DNA evidence would demonstrate innocence on a

⁸ RCW 10.73.170(1) identifies a qualifying defendant as an individual convicted of a felony in a Washington state court, currently serving a term of imprisonment or community custody confinement, who submits a verified written motion requesting testing. RCW 10.73.170(1); *Slattum*, 173 Wn. App. 640 (construing “serving a term of imprisonment” to include incarceration in prison or service of community custody). The State does not dispute that Mr. McAdams is a qualifying individual under the statute.

⁹ The alternative procedural prongs, that the trial court ruled DNA testing did not meet scientific standards or was not sufficiently developed, are not at issue in this case. RCW 10.73.170(2)(a)(i), (ii).

more probable than not basis,” presuming favorable DNA results. RCW 10.73.170(3); *Crompton*, 181 Wn.2d at 262; *State v. Riofta*, 166 Wn.2d 358, 368-69, 209 P.3d 467 (2009).

If the defendant satisfies RCW 10.73.170’s procedural requirements of stating the basis for the request and explaining the relevance of the DNA evidence sought, and satisfies the substantive requirement of showing the “likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis,” “the court must grant the motion.” *Riofta*, 166 Wn.2d at 364 (quoting RCW 10.73.170). The State concedes that a court has no discretion to deny a motion where a defendant meets the requirements. BOA at 4.

b. RCW 10.73.170 does not require a court to enter findings; therefore, the court did not abuse its discretion in ordering testing without entering findings.

i. *The statute does not require findings.*

Nothing in RCW 10.73.170 requires a court to enter findings of fact or conclusions of law to resolve a postconviction testing motion. The State cites no applicable authority that a court must do so. Instead, the State cites to *Coggle v. Snow*, a thirty-year-old civil case holding the trial court abused its discretion in granting summary judgment in a medical malpractice case where it was unclear if the court considered the declarations opposing summary judgment before dismissing the case. 56

Wn. App. 499, 505-06, 784 P.2d 554 (1990); BOA at 5. *Coggle* fails to support the State’s proposition that a court must enter “specific findings” in resolving a motion for postconviction DNA testing and that it abuses its discretion when it fails to do so. BOA at 5. Instead, *Coggle* explains judicial discretion “requires decision-making founded upon principle and reason,” and that a court may abuse its discretion where it acts without any reason. 56 Wn. App. at 505. *Coggle* is inapposite.

This Court has already acknowledged that RCW 10.73.170 imposes no requirement for the trial court to enter findings in deciding such motions. In *State v. Gray*, the court recognized, “The statute does not explicitly require that the court enter findings of fact.” 151 Wn. App. 762, 767 n.5, 215 P.3d 961 (2009). Indeed, the Court reviewed a court’s order denying a motion where the court entered no findings and “stat[ed] only that, ‘[d]efendant’s Motion is Denied for failure to satisfy the requirements of RCW 10.73.170.’” *Id.* at 767. Thus, *Gray* confirms a trial court need not enter findings in resolving a motion for testing and does not abuse its discretion when it orders testing without issuing specific findings.

In addition, this Court recently considered whether a trial court need enter findings when the applicable rule or statute does not require them. *State v. Ingram*, ___ Wn. App. 2d ___, ___ P.3d ___, 2019 WL

2347441 (June 4, 2019). In *Ingram*, the defendant appealed the court’s bail determination and argued the court erred in failing to enter oral or written findings to support its bail decision. 2019 WL 2347441 at *3. In rejecting the defendant’s argument that the court was required to make findings, the Court held that where the relevant rule, there CrR 3.2, did not “expressly require that the trial court enter any oral or written findings,” the court did not err in failing to do so. *Id.* at *4.

Unless relevant authority specifically states otherwise, nothing compels a court to issue oral or written findings justifying its decision on motions. Indeed, courts routinely grant or deny motions in one word rulings after hearing arguments or reading briefs. For example, courts regularly decide motions in limine and evidentiary motions without providing reasons explaining rulings and regularly rule on oral motions and objections.

The specific inclusion of a requirement for findings in certain court rules or statutes renders the absence of such a requirement in this statute

meaningful.¹⁰ Here, the legislature declined to require a court issue findings in support of its decision on testing motions. Therefore, no findings are required.

Moreover, the mandatory nature of the statute makes findings unnecessary. Where a defendant has met the procedural and substantive requirements of the statute, the court *must* grant the motion. RCW 10.73.170(3) (“shall”). The statute authorizes no discretion but instead compels a court to grant the motion where the defendant meets the statutory requirements and to deny it where the defendant does not. Therefore, where a court grants a motion, it is because it necessarily found the applicant met the substantive and procedural requirements.

A court cannot abuse its discretion when it fails to do something it is not required to do. The State fails to demonstrate the court abused its discretion by not entering findings. This Court should affirm.

¹⁰ For example, CrR 3.6(b) requires written findings of fact and conclusions of law when the court holds a suppression hearing; CrR 6.1(d) requires findings of fact and conclusions of law when the court tries a case without a jury; CrR 8.3(b) and (c)(4) require reasons in a written order when the court dismisses a case on its own or a defendant’s motion; and RCW 9.94A.535 requires the court to “set forth the reasons for its decision in written findings of fact and conclusions of law” anytime it imposes an exceptional sentence outside of the standard range. The same is true for required oral findings. *See, e.g.*, CrR 3.3(g) (requiring “a finding on the record or in writing” that defendant will not be substantially prejudiced before court may grant continuance of speedy trial under cure period).

- ii. *If the State believed findings were necessary, it bore the obligation to ensure the court entered findings.*

As the appellant, if the State felt the record lacked sufficient findings to enable appellate review, the State bore the burden of addressing the court and ensuring the court entered sufficient findings. Where a court fails to make or enter findings necessary to appellate review, it is the appellant who must make efforts to secure the findings. *State v. Yallup*, 3 Wn. App. 2d 546, 555-557, 416 P.3d 1250, *review denied*, 191 Wn.2d 1014 (2018).

In *Yallup*, this Court criticized the appellant for filing an opening brief in the absence of findings required by CrR 6.1 and for “attempt[ing] to use the absence of findings for his own benefit.” 3 Wn. App. 2d at 556. The Court held that where a court rule or statute requires written findings, it is *the appellant* who must “make best efforts to alert respondent that action is needed” and, if that fails, it is *the appellant* who “should enlist th[e] court’s assistance.” *Id.* at 556-57. What the appellant may not do is rely on the absence of findings to advance his argument. *Id.* at 556. If the State believed the court’s grant of Mr. McAdams’s motion and entry of order for testing in the absence of specific findings impaired this Court’s ability to review and decide whether the court abused its discretion, it is

the State who bore the burden of securing necessary findings. The State may not use its failure to do so as a reason for reversal.

iii. *If findings were required, the remedy is remand for findings.*

Finally, should this Court disagree and hold findings are required, despite the absence of authority requiring a court to enter findings in deciding a motion for postconviction DNA testing, the remedy is not reversal and vacation of the order, as the State suggests. Rather, the remedy is remand for the court to enter findings of fact. *See, e.g., State v. Friedlund*, 182 Wn.2d 388, 393-94, 341 P.3d 280 (2015) (court's failure to enter written findings justifying exceptional sentence as required by statute requires remand for findings); *State v. Head*, 136 Wn.2d 619, 623-24, 964 P.2d 1187 (1998) (remedy for court failed to enter required findings following bench trial is remand for findings); *State v. Austin*, 65 Wn. App. 759, 762, 831 P.2d 747 (1992) (remanding for juvenile court to make required findings as to elements of offense).

c. Mr. McAdams demonstrated DNA testing would provide significant new information; therefore, the court did not abuse its discretion in ordering testing of fingerprint lifts.

RCW 10.73.170(2)(a) requires that defendants state in their

motion:

(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.

Mr. McAdams asserted the requested DNA testing would provide significant new information. RCW 10.73.170(2)(a)(iii); CP 50-51.

The State argues the court abused its discretion in granting the order because Mr. McAdams did not show the requested DNA testing will provide significant new information. BOA at 5-7. The State confines this challenge solely to the testing ordered for the latent fingerprint lifts, not to the ordered testing for the other items. The State misinterprets the statute and misapplies the required presumption. Because Mr. McAdams established the requested testing will provide significant new information, the court did not abuse its discretion in granting the motion and ordering testing, including testing of the prints.

- i. *The statute requires the court to presume testing will yield favorable DNA results, not presume testing will yield no results or inaccurate results.*

First, the State's claim that Mr. McAdams did not include DNA testing of the fingerprints lifts in his original motion and only added them in his reply is demonstrably false. BOA at 6 n.3. Mr. McAdams consistently requested testing on the latent fingerprint lifts, from his original motion through his reply and at the argument. Mr. McAdams

included a request for testing of the print lifts in his original motion under the heading, “The Requested DNA Testing Involves Evidence that Is Material to Discovering the Identity of the True Perpetrator,” subsection d, titled, “Unidentified Fingerprints on the Interior and Exterior of the Car.” CP 51, 55. He reiterated his request for DNA testing of the print lifts in his reply and at the hearing. CP 10-11; 09/15/17 RP 5, 22-23. This Court should reject the State’s inaccurate claim that Mr. McAdams only requesting testing of the print lifts in the reply.

Second, the State is wrong on the merits. RCW 10.73.170 imposes no burden on defendants to prove the requested testing of evidence will, in fact, be successful and will definitely reveal a DNA profile. To the contrary, in *Crumpton*, the court held the statute requires courts to presume the requested testing of evidence will not only reveal results but will reveal favorable results. 181 Wn.2d at 261-62. *Crumpton* further requires courts to use that presumption of favorable test results in assessing the likelihood of innocence. *Id.* Courts are not to assess the likelihood testing will reveal a DNA profile in the first place. In this way, the legislature did not require a defendant prove the viability or feasibility of testing in each particular case. Rather, the court must presume the requested DNA tests will yield results and that those results will be favorable to the defendant.

Instead of presuming testing will yield favorable DNA results for Mr. McAdams, as the statute requires, the State urges this Court to apply the converse presumption and argues that because it is unlikely testing of the print lifts will yield any results in the first place, the court should have denied the motion with respect to testing of the prints. BOA at 5-7. The Supreme Court already rejected the State's argument in *Crumpton* and held "a court should evaluate the likelihood of innocence based on a favorable test result, not the likelihood of a favorable test result in the first place." *Crumpton*, 181 Wn.2d at 262.

In addition, nothing in the record proves testing of the latent print lifts would necessarily yield no results or inaccurate, unreliable results. Mr. McAdams presented the court with several scientific studies discussing the feasibility of recovering DNA profiles from prints. *See, e.g.*, CP 159-70. Nothing in record contradicts this. As the State concedes, the studies prove "it is possible to extract genetic material from latent fingerprint lifts." BOA at 6. The studies discuss preferred methods for print processing where DNA testing may later be conducted and recognize that DNA testing of prints is possible. Testing of print lifts may result in DNA profiles less often than testing of other objects, but the court may not concern itself with the likelihood of obtaining results but must instead assume results will be obtained. Thus, the State fails to show the

court adopted a view “no reasonable person would take” or made a decision “outside the range of acceptable choices” in finding Mr. McAdams demonstrated testing could provide significant new information and in granting the motion.

The State clings to a single conclusory section of one study that recommends a Kansas court not order DNA testing of print lifts taken from a 1978 crime scene. BOA at 7. The State fails to show the study’s conclusion counseling against testing of that particular almost-forty-year-old sample merits broader applicability. In addition, as discussed below, the State fails to appreciate that here, unlike in the study, the court did not order testing solely of the print lifts but instead ordered testing of multiple items that have the potential to demonstrate a redundant DNA profile.

This is not a case where the record establishes DNA testing of print lifts is unavailable. Nothing the State argues demonstrates scientists are unable to conduct DNA testing on fingerprint lifts. To the contrary, the articles submitted by Mr. McAdams and cited by the State demonstrate such testing is possible. In addition, unlike testing statutes in some jurisdictions, RCW 10.73.170 imposes no requirement on defendants to affirmatively establish the feasibility of testing particular items prior to moving for the order and prior to review of the items by the lab. *Compare* RCW 10.73.170 *with* 18 U.S.C. § 3600(a)(5) (requiring defendant

demonstrate the scope and methods for proposed testing meet certain evidentiary and scientific standards).

- ii. *The court limited the order to testing of those items the crime lab deems suitable and appropriate for testing.*

The court ordered DNA testing on multiple physical objects as well as several fingerprint lifts. However, the court specifically ordered that the Washington State Patrol Crime Laboratory scientists are to “determine whether the evidence subject to this order is suitable for DNA testing” after the evidence is transferred to their lab and the scientists are able to examine the items. CP 24, ¶ 5. The court deferred to the crime lab scientists to use their expertise and discretion in determining the propriety of testing after they are able to assess the items.

The State fails to show the court acted unreasonably or made an unacceptable choice in deferring to the lab. Courts have approved of a trial court deferring to the lab’s expertise in making testing assessments. For example, in *State v. Gentry*, the trial court considered a “preliminary letter” from the crime lab “indicating its ability to perform testing” on certain items, as well as identifying “the items most likely to yield probative DNA test results” in resolving the defendant’s postconviction testing motion. 183 Wn.2d 749, 755-56, 356 P.3d 714 (2015). The court acted well within its discretion by ordering testing of all the requested

items, including the fingerprint lifts, while deferring to the lab to determine the suitability of each item for testing before it begins.

iii. *The State ignores the potential significance of redundant results.*

The court did not order testing *only* on the fingerprint lifts. Instead, the court ordered testing on multiple items. In doing so, the court recognized the value of the potential for a redundant profile that appears in testing multiple different items. For example, if testing revealed the same person's DNA profile on the tire iron, the coveralls, and the print lifts, it would be a redundant profile. Whereas a DNA profile recovered from the print lifts alone may seem insignificant, that same profile recovered across multiple items gains importance. As explained in Mr. McAdams's motion, here the "significant new information" DNA testing could potentially reveal may be a redundant profile across multiple items. RCW 10.73.170(2)(a)(iii); CP 9-12, 56-58.

The testing of the print lifts, when considered in conjunction with the testing of other items, reveals their potential for relevant information. In *Gray*, the court considered testing of multiple items, none of which considered alone would establish a reasonable probability of innocence. 151 Wn. App. 762. In *Gray*, the defendant was arrested near the site of a sexual assault after bloodhounds tracked him from the scene and two

eyewitnesses who observed the assault identified the defendant as the perpetrator. 151 Wn. App. at 766.

The court considered the materiality of potential DNA results from testing of the victims's clothing and hairs recovered from the victims, the defendant, and the scene. *Id.* at 771. The court recognized the hairs, considered in isolation, could be meaningless because “any number of innocent people could have deposited hairs on the victims or the [scene].” *Id.* at 772. However, the court rejected the State's argument the potentially innocuous nature of the hairs, considered alone, meant that testing could not support the probability of innocence. When considered collectively, the court found “the possibility exists” that results from the hairs could reveal they were from the same person, which could be material to identifying the perpetrator. *Id.* at 772. The court recognized the importance of a redundant profile and held “we must consider the possibility that *the combination of the test results* would identify the perpetrator.” *Id.* (emphasis added).

Gray recognized that the presumed favorable results may be a profile, discovered across multiple items, which only gains import from its redundancy. The court approved the testing order even though “the record does not show the extent to which the perpetrator may have had direct contact with [the items to be tested].” *Id.* at 771. Here, as in *Gray*, “the

combination of the test results” could identify the perpetrator, even where results from a single item – the fingerprints – may not. *Id.* at 772.

For all these reasons, the State fails to prove the court abused its discretion in including testing of the print lifts in its order. This Court should affirm the court’s order in its entirety.

- d. Mr. McAdams showed presumed favorable DNA results would demonstrate his innocence more probably than not; therefore, the court did not abuse its discretion in ordering testing.

Mr. McAdams showed the likelihood that testing the requested items “would demonstrate innocence on a more probable than not basis.” RCW 10.73.170(3). Mr. McAdams posited potential favorable results as (1) his exclusion as a contributor to DNA on the tire iron, (2) a DNA profile from any item that matches a profile in the DNA database, or (3) detection of the same DNA profile on multiple items (redundancy). CP 57. Because Mr. McAdams met the standard, the court properly granted his motion.

The State argues the court abused its discretion in granting the motion because Mr. McAdams did not demonstrate a likelihood of innocence. The State claims the items to be tested are not closely linked with the attacker, that even favorable results would be meaningless, and improperly heightens the burden to require proof of actual innocence from the DNA test results alone. This Court should reject the State’s arguments

and find the court did not abuse its discretion because Mr. McAdams satisfied the substantive prong.

- i. *The items requested for testing are all directly or potentially linked with the perpetrator of the crime or the crime scene.*

The State argues the court abused its discretion in granting the motion because the requested testing “lacks any potential to prove Mr. McAdams innocent.” BOA at 7. More specifically, the State claims “none of the items to be tested are closely linked with the perpetrator of the crime.” BOA at 8. This claim is patently false.

First, among the items ordered tested is the tire iron which the perpetrator held and used to beat the victim during the assault. The State fails to explain its position that the very assault weapon that the perpetrator wielded and used to assault the victim is not “closely linked with the perpetrator of the crime.” A DNA profile on the assault weapon matching someone other than Mr. McAdams could more probably than not demonstrate his innocence. Likewise, a DNA profile on the victim’s jean coveralls, which eyewitnesses observed the perpetrator grab and which police recovered from the victim, would more probably than not demonstrate Mr. McAdams’s innocence. Scientist Hodge specifically endorsed testing of both of these objects, among other items. CP 71-73.

Second, with respect to the other items ordered tested, the ability of testing to demonstrate Mr. McAdams's probable innocence depends on the test results. Each item is potentially linked with the perpetrator, particularly when considered collectively. Among the other items for testing are the clothing and items found in the locked and unlocked areas of the car that the attacker stole, as well as developed prints found in the car.

With respect to some of the items ordered tested, the absence of Mr. McAdams's DNA from a single item, considered alone, may not appear to demonstrate innocence. Likewise, the presence of another person's DNA alone may not seem to demonstrate innocence. However, the absence of Mr. McAdams's DNA and the presence of another person's DNA, across multiple different items, considered together, is demonstrative of Mr. McAdams's innocence. All of the items were either used to facilitate the crime or were found at the crime scene or on the victim. The Court should reject the State's claim the items are not connected to the perpetrator or the crime.

- ii. *Presumed favorable DNA results from items recovered from the victim and the crime scene, considered with the inconsistent eyewitness testimony and other evidence, demonstrate a reasonable probability of innocence.*

The court must assume the DNA results will be exculpatory and consider what is “the likelihood that *favorable* DNA evidence would demonstrate innocence on a more probable than not basis.” *Crumpton*, 181 Wash.2d 252 (emphasis in original). In other words, the court is not assessing the probability of favorable DNA results. The court assumes favorable DNA results and assesses the impact of those favorable results on the defendant’s innocence. Where there is a reasonable probability of innocence, the court must grant the motion.

As it did in opposition to Mr. McAdams’s motion below, the State continues to apply the wrong legal standard even while citing the correct principle. The State concedes the court was required to presume favorable results. BOA at 7-8. But the State consistently rejects the favorable results presumed by the trial court -- that Mr. McAdams’s DNA is not on any item tested and another individual’s DNA is on multiple items tested -- and analyzes the motion presuming *unfavorable* results. In addition, the State discounts the presumption of favorable results by arguing multiple people could have touched the objects requested for testing.

The State's arguments fail to show the court acted unreasonably or made an unacceptable decision in granting the motion. As Scientist Hodge explained, the State crime lab has the ability to analyze even a DNA sample with multiple people's DNA in it and has software to interpret the meaning of such results. CP 70-73. Mr. Hodge also specifically endorsed testing and explained the advanced testing methods that may develop profiles, despite the presence of DNA from multiple different individuals on objects.

The State also argues the court abused its discretion in granting the motion because Mr. McAdams has not "establish[ed] that favorable results would prove [him] innocent." BOA at 7. This is not the standard under RCW 10.73.170. The testing statute is not limited to cases in which the DNA alone is dispositive of innocence, such as, for example, single perpetrator rapes with semen evidence. Rather, the statute permits testing where favorable results are but one piece of evidence supporting the probability of a defendant's innocence. Contrary to the State's argument, a moving defendant need not prove the DNA results will establish actual innocence solely through the postconviction motion. Rather, the standard is "favorable DNA results could lead to the production of evidence that would raise a reasonable probability of innocence." *Riofta*, 166 Wn.2d at 368. In considering the probability of innocence, courts must consider the

presumed favorable DNA results, evidence from trial, and any newly discovered evidence. *Crumpton*, 181 Wn.2d at 260; *Riofta*, 166 Wn.2d at 369.

In determining whether a defendant has met the substantive prong of the statute, the court “must look to whether the DNA results, in conjunction with the other evidence from the trial, demonstrate the individual’s innocence on a more probable than not basis, assuming the DNA results would be favorable to that convicted individual.” *Crumpton*, 181 Wn.2d at 264. The State heightens the standard well beyond that established in the statute to require a defendant establish his actual innocence in the postconviction motion.

Nor are the State’s comparisons to *Riofta* persuasive. *Riofta* is distinguishable from Mr. McAdams’s case in three important ways. First, *Riofta* had no potential of favorable results that included redundancy across multiple item. 166 Wn.2d at 363 (noting defendant sought testing only of one white hat). Unlike *Riofta*, in which the defendant sought testing of a single item, in this case, the court ordered testing of multiple items. Those items were recovered from the car where the victim was attacked and from the victim himself and include several items witnesses observed the perpetrator touching, including the assault weapon and the victim’s clothing. Here, unlike *Riofta*, the same profile discovered on

multiple items could reveal the identity of the perpetrator. The required presumption of favorable results, when applied to the facts of this case, compels a different result than *Riofta*.

Second, in *Riofta*, the court found the fact that the victim knew his attacker eliminated the likelihood of a mistaken eyewitness identification. While the court recognized, “mistaken eyewitness identification is a leading cause of wrongful conviction,” it dismissed this possibility because the victim knew the perpetrator. *Riofta*, 166 Wn.2d at 371 (citing Brandon L. Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55, 60 (2008)).¹¹ Here, unlike *Riofta*, Mr. Salih did not know his attacker. In addition to the victim not knowing his attacker, the varying and conflicting eyewitness opinions demonstrate this case contains the possibility of mistaken eyewitness identification. Four eyewitnesses viewed a photo montage three days after the attack and none of them identified Mr. McAdams as the attacker. The State’s efforts to dismiss the role of mistaken eyewitness identification falls short. Instead, the possibility of a mistaken identification, combined with the presumed favorable results, increases the probability of Mr. McAdams’s innocence.

¹¹ Mr. McAdams also submitted Professor Garrett’s article as part of his motion, and it appears in the record at CP 268-331.

Finally, in *Riofta*, the court considered the strong motive evidence giving Mr. Riofta an incentive to attack the victim. There, the defendant knew the victim and knew his brother testified in a gang-related trial of interest to the defendant. *Riofta*, 166 Wn.2d at 363, 372. Here, the State presented no motive evidence whatsoever. In fact, the motive evidence pointed to someone who knew the victim and his family. For all these reasons, *Riofta* is distinguishable on the facts.

iii. *Because presumed favorable DNA results, considered with the other evidence, are reasonably probable to show Mr. McAdams's innocence, the State fails to show the court abused its discretion in ordering testing.*

A court reviewing a motion for testing must presume testing will yield results favorable to the defendant in considering whether the defendant has shown results raise the likelihood of innocence. *Crumpton*, 181 Wn.2d at 260. Mr. McAdams demonstrated the requested DNA testing would provide significant new information from evidence never before tested for DNA that is relevant to the identity of the perpetrator. RCW 10.73.170(2)(a)(iii), (b); CP 50-56. In addition, Mr. McAdams showed favorable DNA results would demonstrate his innocence on a more probable than not basis. CP 56-63. Finally, the Washington State Patrol Crime Laboratory supported Mr. McAdams's motion.

The court acted reasonably and made an acceptable decision in granting the motion and ordering testing. The State fails to show an abuse of discretion. This Court should affirm.

E. CONCLUSION

The State may not appeal the order granting Mr. McAdams's motion for postconviction DNA testing, and this Court should dismiss the appeal. Alternatively, the court properly applied the provisions of RCW 10.73.170, and the State has failed to show the court abused its discretion in granting the motion. This Court should affirm the order granting Mr. McAdams's motion for postconviction DNA testing in its entirety.

DATED this 1st day of July 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Huber', with a long horizontal flourish extending to the right.

KATE R. HUBER (WSBA 47540)
Washington Appellate Project (91052)
Attorneys for Appellant
katehuber@washapp.org
wapofficemail@washapp.org

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

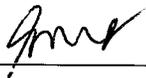
STATE OF WASHINGTON,)	
)	
APPELLANT,)	
)	
v.)	NO. 36405-4-III
)	
GRANT MCADAMS,)	
)	
RESPONDENT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 1ST DAY OF JULY, 2019, I CAUSED THE ORIGINAL **BRIEF OF RESPONDENT** TO BE FILED IN THE COURT OF APPEALS – DIVISION THREE AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] LARRY STEINMETZ [SCPAappeals@spokanecounty.org] SPOKANE COUNTY PROSECUTOR'S OFFICE 1100 W. MALLON AVENUE SPOKANE, WA 99260	() () (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X] GRANT MCADAMS 303490 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 1ST DAY OF JULY, 2019.

X _____ 

WASHINGTON APPELLATE PROJECT

July 01, 2019 - 4:23 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36405-4
Appellate Court Case Title: State of Washington v. Grant Thomas McAdams
Superior Court Case Number: 11-1-01580-8

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