

FILED
Nov 1, 2016
Court of Appeals
Division I
State of Washington

No. 74872-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

STATE OF WASHINGTON,

Respondent,

v.

Steven L. Cook,

Appellant.

Supplemental
STATEMENT OF ADDITIONAL
GROUNDS (RAP 10.10)

I, Steven L. Cook, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

STATEMENT OF ADDITIONAL
GROUNDS (RAP 10.10)

Page: 1 of 101

ADDITIONAL GROUND ONE

The appellant argues that during the Motions in Limine, Counsel for the defendant failed to provide effective assistance of counsel not affecting when the prosecutor put forth to the presiding judge deceptive, speculative misrepresentation of material forensic evidence that was exculpatory in nature to minimize the quantity and importance of that evidence.

Before any testimony was provided by the forensic examiner, or any other witnesses was presented, the defense attorney allowed the prosecutor to convince the judge that false inaccurate representation of the facts were true and based upon fact.

The judge believing the testimony of the prosecutor, entered into the case with a misconception and lack of accurate reliable facts. The information

ADDITIONAL GROUND ONE

that the prosecutor used to mislead the judge was without solidation from any witness and was in fact proven invalid and without merit by the state's own forensic scientist that was appointed to collect and comment on forensic samples taken from the alleged victim.

The attorney for the defense failed to identify and object to the prosecutor's deceptive tactics and inform the presiding judge of the true and accurate facts relevant to the case.

The defense attorney is guilty of ineffective assistance of counsel

The prosecution explained to the judge that the alleged victim received a sexual assault examination for her allegations of self finger penetration. RP.14

(A) Knowing about the large quantity of massage oil that the alleged victim testified to being present during the alleged assault, the attorney for the defense failed to provide effective assistance of counsel when she failed to object to the prosecutor minimizing the amount and importance of the massage oil by making it sound as if it was only relevant for preventing physical trauma to the alleged victim and stating that it had minor evidentiary value. RP.19

(B) The attorney for the defense never objected when the prosecutor told the judge that the reason for not testing the swabs was because the alleged

victim had shaved and used the
facilities and did not tell the judge
that you can not remove DNA or the oil
that was not mentioned, by shaving or
usinging. RP.15

(C) By not objecting to the judge stating
that all examination does is let the
jury know that there was no evidence and
that there shouldnt be any expected. RP.16

(D) Did not object when the judge speculated
that it shouldnt be surprising that there isn't
any physical evidence and that "ever thought
there is no prejudicial value the evidentiary
value is not high. So the prejudice does not
substantially outweigh the probative value.

The attorney for the defense is guilty of
ineffective assistance of counsel for not objecting
to the judge stating for the record false and
untrue statements without the benefit of expert testimony.

EXHIBIT A

1 MS. SILBOVITZ: Your Honor, that's correct.

2 In interviewing Ms. Fukura in preparation for the
3 trial, she basically drew a conclusion that she didn't
4 find anything at all that would be probative to the jury.
5 She found no trauma in the examination that she did. She
6 could both draw the conclusion that it was not
7 inconsistent with what Ms. Robinson reported, but it's
8 also not inconsistent or adversely consistent with no
9 assault at all.

10 So her testimony in the very simplest form is not
11 relevant because it's not going to be helpful to the jury
12 to make a determination one way or another whether or not
13 an assault occurred.

14 THE COURT: Mr. Hendrix?

15 MR. HENDRIX: Your Honor, I filed a brief on 803
16 just now. Our position, of course, is it is helpful to
17 the jury. She did receive a sexual assault examination.
18 The allegations here, of course, are a digital
19 penetration, a brief digital penetration, I think, three
20 times.

21 She is going to testify that with an adult woman, one
22 who has had three children, that a digital penetration
23 that wasn't exceedingly rough or violent wouldn't likely
24 leave any signs of such occurrence.

25 ~~The jury is going to hear she had a sexual assault~~

1 seeking to introduce regarding the statements of the
2 alleged victim to the examiner. The examiner, then, is
3 going to be testifying, and there will, of course, be
4 evidence that an examination took place.

5 The information that she proposes to provide to the
6 jury, being that this examination, this particular
7 examination provided no physical evidence of trauma, and
8 also this sort of physical incident that occurred would
9 not be expected to produce evidence of trauma is perhaps,
10 of fairly minor evidentiary value.

11 I can't say it has no evidentiary value because, under
12 the circumstances as they will be related, it will be
13 helpful to the jury to understand what took place,
14 especially since there will already be evidence from the
15 nurse examiner that an examination took place or else the
16 803 exception would make no sense. The State is entitled
17 to offer that.

18 I think the State is entitled, furthermore -- well, the
19 very fact that an examination took place, it does seem to
20 me that the very fact that the examination took place is
21 going to naturally cause the jury to wonder what were the
22 results.

23 I suppose it might be confusing and perhaps even
24 prejudicial either way to allow them to guess as to what
25 the results were and maybe speculate that there were some

1 results, but there weren't.

2 It may be that most people would understand anyway that
3 the sort of incident that the alleged victim described is
4 not likely to produce any evidence of trauma.
5 Nevertheless, there is no prejudice that I can see to the
6 defendant to allowing that in.

7 On the contrary, it doesn't say much of anything beyond
8 telling the jury that it should not be surprising that
9 there isn't any physical evidence. The lack of physical
10 evidence is something that I suppose supports the
11 defendant's position. The explanation for that is fair.
12 Even though the evidentiary value is not high, there is no
13 significant prejudicial value. So the prejudice does not
14 substantially outweigh the probative value.

15 Therefore, the State will be permitted to introduce
16 evidence (1) that there was an examination, (2) that the
17 examination produced no evidence of trauma, (3) that that
18 is to be expected given the allegations according to the
19 examiner, and (4) such information that the examinee, the
20 alleged victim, gave to the examiner for purposes of
21 diagnosis and treatment. To the extent the nurse can talk
22 about those things, they will be admitted.

23 What is next?

24 MS. SILBOVITZ: Your Honor, No. 3 asks that the
25 State provide any evidence of prior convictions they

1 ~~examination. They should be able to hear what it~~
2 ~~revealed. In this case, for digital penetration, it~~
3 ~~wouldn't necessarily have any visible signs.~~

4 THE COURT: What material fact does it tend to
5 establish?

6 MR. HENDRIX: ~~Digital penetration can occur~~
7 ~~without injury or trauma.~~

8 ~~At this point, I think there are some other factors~~
9 ~~that may -- I'm not sure they will -- establish that I~~
10 ~~believe it's some cream or oil was used during the massage~~
11 ~~which may again explain why there was no visible injuries~~
12 ~~present.~~

13 ~~Some DNA swabs were taken. They weren't analyzed~~
14 ~~mainly because it would be unlikely that digital~~
15 ~~penetration two days later after the victim had gone to~~
16 ~~the bathroom and showered, that any DNA would be present.~~

17 THE COURT: All right.

18 I have been handed a brief on 803. I haven't actually
19 read this yet, but is there some 803 evidence that you
20 believe will come in in connection with the examination?

21 MR. HENDRIX: Mainly, just her statements.
22 Identity isn't an issue. When I looked through the
23 motions in limine this weekend, I thought it had gone
24 toward that.

25 As far as helpfulness to the jury, our position is it

1 does show this type of violation doesn't necessarily have
2 to have a visible injury.

3 THE COURT: But you are not using the evidence
4 of the examination in order to introduce any 803 evidence,
5 are you?

6 MR. HENDRIX: Well --

7 THE COURT: Is there some 803 evidence we should
8 be talking about?

9 MR. HENDRIX: She did identify the allegations,
10 what happened in the identity of, of course, her
11 assailant.

12 THE COURT: Are you seeking to introduce that?

13 MR. HENDRIX: Yes.

14 THE COURT: All right.

15 Is that part of why you wish to bring in evidence of
16 the examination?

17 MR. HENDRIX: That is also part of it, yes.

18 THE COURT: All right.

19 So the purpose of bringing in the examination is both
20 to perhaps explain that the examination not only didn't
21 produce any evidence, but shouldn't be expected to, and
22 also to bring in evidence that the alleged victim
23 identified the perpetrator and what he did to the
24 examiner. Is that the long and short of it?

25 MR. HENDRIX: To the examinee, yes.

ADDITIONAL GROUND TWO

The attorney for the defense by failing to request forensic examination swabs that were collected from the alleged victim of a sexual assault and whose a man accused of the assault was claiming to be innocent, in order to have them analysed independent of the prosecution, the attorney for the defense failed to provide effective assistance of counsel.

Defense counsel constitutionally ineffective when (1) the attorney's performance was unreasonably deficient and (2) the deficiency prejudiced the defendant.

State v. Thomas, 109 Wn.2d 222, 225-26, 743

P.2d 816 (1987)

(A.) In testimony provided by the forensic scientist appointed to do a sexual assault examination of the alleged victim of an alleged sexual assault stated that she did a complete gynecological exam RP 208

2-1

on a woman accusing a man of an
assault. The examiner stated that she took
swabs to test for STDs and DNA if the
assault was within seven days or an
office policy and even further out.

The examiner also stated that DNA
could have been taken from the swabs.
RP. 213 She testified that "we are looking for
DNA on the swab" and that if there was
transfer of DNA into the vagina the swab
would capture it if the swab was in the
right spot, and if the defendant had oil
on his hands," it would leave skin cells
and oil depending on what the oil is. RP. 214

The forensic nurse stated that the
purpose of doing four swabs is to get a
good area and that the swabs are
divided supposedly between the prosecution
and the defense. RP. 216 The examiner
testified she was never made aware of oil.

2-2

and that if the defendant had
oil on his fingers it would be
potentially recovered on a swab. RP 218

(B.) The alleged victim testified in court
that the defendant used oil, he used
it for everything he was massaging RP 54

She stated "he used a fair amount of
oil RP 63 and that "he didn't have to
force it, there was a lot of lotion and
it went in easily" RP 67

(C.) The detective testified that she collected
examination swabs and did not send
them to the lab for analysis but that
we were looking for touch DNA. Although
she knew about the massage oil she did
not tell the forensic scientist about it,
then told the jury there was no other
collectible evidence that could be identified.

RP 179

(D.) The prosecutor in his closing

2-4

arguments to the jury stated that
there was a small chance that DNA
could have been on the swab that
was used to test for STD's. RP 45

The prosecutor's statement contradicts
the detective that testified that the swabs
were not tested for anything even though
she was aware of the massage oil
RP. 191-92.

The attorney for the defense was aware
that a sexual assault examination in
an attempt to gather evidence against Lee
Clint. She knew that swabs were taken
and that the forensic scientist believed that
DNA as well as massage oil evidence that
the investigating detective suppressed from
the examiner could have been collected
and identified if in fact an assault had
happened. The defense attorney was aware that

2-5

the examination swabs were supposed
to be divided between the prosecution and
the defense. The attorney was aware that
the exam swabs were not sent to the lab
for analysis under false pretenses and that
the detective told the jury that the swabs
were not tested for anything. Finally the
defense attorney knew that the prosecutor
told the jury that one of the swabs was
tested and was aware of large amounts
of exculpatory massage oil evidence that
the alleged victim testified to and that
the forensic scientist said would "likely"
be collected if the swabs had been tested.

In spite of the evidence and testimony
provided by the forensic nurse that shed light
on suppression by the prosecution and
contradicted the false testimony and use
of junk science and fabricated reasoning.

that was presented to the jury by the detective, the prosecutor and the alleged victim herself the attorney for the defense failed to demand or request a share of the examination swabs for an analysis independent of the prosecution.

Results from an analysis of the swabs could have provided exculpatory evidence that the defendant was innocent on a more probable than not basis and that if presented to the jury the outcome of the trial would have been different.

The attorney for the defense failed to provide effective assistance of counsel resulting in denial of due process for her own client.

The Sixth Amendment as well as Article I, Section 22 of Washington's Constitution guarantee the right to

2-7

effective assistance of counsel for the
defense of accused persons. "A claim of
ineffective assistance of counsel may be
considered for the first time on appeal
as an issue of Constitutional magnitude"
State v. Nichols, 161 Wn.2d 1, 9, 162 P.3d 1122 (2007)

Only trial strategy or tactics constitute
reasonable performance

State v. Aho 137 Wn.2d 736, 745, 975 P.2d 512 (1999)

The presumption of competent performance
is overcome by demonstrating "the absence
of legitimate strategic or tactical reasons
supporting the challenged conduct by counsel."
State v. Crawford, 159 Wn.2d, 98, 147 P.3d 1288 (2006)

Under the second prong, the court
must reverse if it finds a "reasonable
probability that, but for counsel's
unprofessional errors the result of the
proceeding would have been different
Thomas, 109 Wn.2d at 226 (citing Strickland 466 U.S. at 694).
Reversal is required when the attorney error
undermines confidence in the outcome. Id.

EXHIBIT B.

1 was specifically there, we talked about a variety of
2 different things, demographic information, where she
3 lived, who she lived with, those kinds of things.

4 The next thing is whether we would do any type of exam,
5 and that's totally up to the patient.

6 Q. What type of exam are you talking about?

7 A. At the very minimum, listen to heart, lungs, listen to
8 tummy, look at eyes, ears, nose, mouth. The more
9 extensive one includes a gynecological exam with swabs.

10 Q. What did Nancy let you do?

11 A. She requested I do the whole exam.

12 Q. Did you do that?

13 A. Yes, I did.

14 Q. Why don't you detail what you did and then I will ask you
15 what you observed?

16 A. Okay.

17 I do it in the same way every time. I started from the
18 top of her head and worked my way down, checking for any
19 signs of bruising. If you find bruising, we generally ask
20 do you know how you got this. The very last part of the
21 exam was the genital exam. She was put in stirrups. It
22 starts as a visual exam. We palpate or touch to see if
23 there is any pain on touch. Then, with her agreement, we
24 do swabs for STDs and also for forensics.

25 Q. By swabs, how do you get those swabs?

1 Ms. Robinson?

2 A. No.

3 Q. Now, you testified that that's not necessarily
4 inconsistent with what she told you had happened, right?

5 A. Correct.

6 Q. But it's also consistent with no sexual assault having
7 happened?

8 A. Correct.

9 Q. Let me make sure I just heard you correctly. You're
10 talking about DNA, and I believe Mr. Hendrix asked you --
11 well, he was asking about taking DNA, and it's your
12 office's policy that you will take it if it is within
13 seven days of the alleged assault, is that right?

14 A. That's the general policy. We have taken it farther out.

15 Q. To the question about whether or not it's likely to
16 transfer DNA based on the allegations Ms. Robinson made, I
17 believe you indicated it's not highly likely, but likely
18 that a DNA transfer occurred. Did I hear you correctly?

19 A. Yes. DNA can be transferred any time you touch anything
20 or anyone.

21 Q. If Mr. Cook put his finger up Ms. Robinson's vagina, there
22 could be DNA that was taken from those swabs?

23 A. It's possible.

24 Q. Possible?

25 A. Yes.

1 MS. SILBOVITZ: No further questions.

2 THE COURT: Further direct examination.

3 MR. HENDRIX: Yes.

4

5

REDIRECT EXAMINATION

6

BY MR. HENDRIX:

7

Q. We talked about a likely DNA transfer from his touching.

8

A. Right.

9

Q. I suppose if he had oil on his hands, that wouldn't make any difference to the DNA, would it?

10

11

A. It would more than likely leave skin cells and oil, depending on what the oil is.

12

13

Q. DNA transfer is different from, I guess, a DNA result on a swab?

14

15

A. No, not really. We are looking for DNA on the swab, as well.

16

17

Q. What I'm asking, though, is would that mean if there was a likely transfer into the vagina, the swab would capture it?

18

19

A. If I got the swab in the right spot, yes.

20

Q. What do you mean by "the right spot?"

21

22

A. Well, the vagina is not just a thin narrow opening. It is large enough to hold a baby at some point, so it may be the size of a fist or maybe a little smaller. If you use a Q-tip and insert it into the vagina, you are doing it

23

24

25

1 MR. HENDRIX: The relevance, was, I believe, the
2 question of no signs, lack of injury or lack of injury or
3 something, and I was eliciting the fact, based on the
4 organ in smaller children, smaller than the victim, there
5 still may not be visible injuries.

6 THE COURT: I will overrule at this time. If
7 the witness can answer, the witness may answer.

8 A. In children, we often don't see injury.

9 MR. HENDRIX: No further questions.

10 THE COURT: Any further cross-examination?

11 MS. SILBOVITZ: Yes, Your Honor.
12

13 **RE-CROSS EXAMINATION**

14 **BY MS. SILBOVITZ:**

15 Q. Just to clarify, Ms. Fukura, that the swabs that you took,
16 how many swabs in Ms. Robinson's vagina?

17 A. Four.

18 Q. Four. The purpose of doing four is to try to get a broad
19 area?

20 A. That, and if a case goes to trial, then the swabs are
21 divided supposedly between the prosecution and the
22 defense.

23 Q. You are indicating that a Q-tip is smaller than the area
24 of the vaginal wall. I'm sure I'm not using the right
25 terms. Would that be accurate?

1 A. He used oil.

2 Q. Where did he put the oil on?

3 A. Throughout the massage, he used it for everything he was
4 massaging. He used oil.

5 Q. Did he pour it on you or on his hand?

6 A. Typically in his hands. I don't remember him ever pouring
7 it on me.

8 Q. Okay.

9 Again, this was all consistent with massages that you
10 have had in the past?

11 A. Correct.

12 Q. Now, you said you had signed in. I'm going to show you
13 what's been marked as State's Exhibit 14, a series of four
14 documents. I'm going to ask you to look at each page of
15 this, and then I'm going to ask you a few questions. Just
16 look to see if you recognize that document.

17 A. Yes.

18 Q. Do you recognize that document?

19 A. Yes.

20 Q. What is it?

21 A. It's the sign-in sheet for Urgent Care Chiropractic.

22 Q. Do you recognize any signature on each of those pages?

23 A. I do. My signature is on there.

24 Q. Are each of those forms dated?

25 A. They are.

1 times?

2 A. He said, "It's okay," and then switched.

3 Q. Reached for the other hand?

4 A. Yes.

5 Q. He did that a couple times and switched back and forth?

6 A. Yes.

7 Q. Did the sheet drop?

8 A. No.

9 Q. What happened next?

10 A. He kind of chuckled, and said go ahead and lay down. The
11 headrest pillow was attached to the table, so I rolled
12 onto my stomach, and the drape at that point was still
13 pulled up across the front of me. I rolled across my low
14 back so he could massage my back. He started massaging my
15 back.

16 Q. Okay.

17 A. He did not use the stones at all during that massage.

18 Q. Did he use any oil?

19 A. He did. He used a fair amount of oil.

20 Q. Okay.

21 When you went from the seated area -- well, strike
22 that.

23 Why didn't you raise both arms out?

24 A. Because the drape would have fallen.

25 Q. What would have been exposed?

1 Q. Did it go in there once or more than once?

2 A. More than once.

3 Q. How many times?

4 A. At least three.

5 Q. Was it hard or forced?

6 A. He didn't have to force it. There was a lot of lotion and
7 it went in easily, but it was -- sorry. It was not a
8 slow -- I don't know how to phrase it.

9 Q. Let me ask you a question. When you say it wasn't slow,
10 what do you mean? Was the action quick?

11 A. Well, it was quick from the back massage to that. I guess
12 what I'm trying to say, it was forced. His finger was up
13 to the knuckle on his hand and so, yeah, I mean it was
14 forced in that respect.

15 Q. Up to the knuckle, the one on the inside of the palm?

16 A. Yes.

17 Q. I'm not sure the term for it is, the big one.

18 Had he done anything prior to moving down to your butt
19 that gave you any indication this would happen?

20 A. No.

21 Q. Did you give him consent to do this?

22 A. No.

23 Q. Did you say, "Oh, feels good, keep going?"

24 A. No.

25 Q. What did you do?

1 vault.

2 Q. Did Nancy end up getting a sexual assault examination?

3 A. She did.

4 Q. Do you know when she did?

5 A. I would know off of her sexual assault medical record that
6 I obtained.

7 Q. It was some point after you contacted her?

8 A. It was. I gave her the resources for her decision.

9 Q. It was at least four or more days after the incident?

10 A. Correct.

11 Q. Did you receive any swabs from that exam?

12 A. I did.

13 Q. Did you send them in for laboratory analysis?

14 A. I put them into evidence. We didn't send them in.

15 Q. Why not?

16 A. Again, the likelihood of locating touch DNA was incredibly
17 unlikely.

18 Q. Did the fact that the defendant told you he touched and
19 later may have touched her vagina have anything to do with
20 that, as well?

21 A. Yes, affirmation. Again, we were just looking for touch
22 DNA. There was no other larger quantity of DNA that we
23 may have been able to locate or identify.

24 Q. So if you found it, it would have been consistent with
25 what he told you and then said maybe?

Closing

1 The law simply requires, "A reasonable doubt is one
2 for which a reason exists and may arise from the
3 evidence or lack of evidence. It is such a doubt" --
4 and these are to an element of the offense -- "as would
5 exist in the mind of a reasonable person after fully,
6 carefully -- fairly, and carefully considering all of
7 the evidence or lack of evidence. But if you
8 have -- if, from such consideration, you have an abiding
9 belief in the truth of the charge, you are satisfied
10 beyond a reasonable doubt."

11 So it's not a reason to doubt. Gee, I guess there
12 was a small chance that the DNA could have been
13 recovered on the swab that was also used to test whether
14 she had any sexually transmitted diseases. It's not a
15 doubt to an element of the offense. It's not a
16 reasonable doubt. It may be for you, but that's for
17 your determination.

18 One thing that you must confront is the conflicts in
19 the defendant's testimony and the logic behind them.
20 He's trying to build a practice. He called her all
21 these times. That cannot be denied. Even if you can't
22 remember them, they can't be denied.

23 So he's called her all these times because he was
24 scared of losing her as a client because he was building
25 his practice. And yet according to him, he asked her



1 conversation going to get more information.

2 Q. Okay.

3 He describes to you unsolicited how he may have touched
4 the outside of her vagina, and you are not interested in
5 how her body was laying at that time?

6 A. Again, I may be very interested, but I'm allowing him to
7 talk. I try not to interrupt.

8 Q. You asked him questions, though?

9 A. Yes, of course.

10 Q. Very specific questions?

11 A. Like I said, I have plenty of questions. I don't always
12 get to ask all of them.

13 Q. Okay.

14 The swabs that were recovered from the exam that
15 Ms. Robinson did, you indicated that you placed into
16 evidence, is that right?

17 A. Correct.

18 Q. They were not tested for anything?

19 A. Correct.

20 Q. Are you aware if they can be tested for anything other
21 than DNA?

22 A. It depends maybe what you're looking for. We don't
23 typically test for anything other than the presence of
24 semen or DNA.

25 Q. Right.

ADDITIONAL GROUND 3

The attorney for the defense failed to provide effective assistance of counsel by
(1) Not objecting to the prosecution's presentation of a detective that as the investigating officer brought conflict of interest by having an interest in the outcome of the trial.
(2) Not objecting to the detective's violation of State and Federal regulations by being presented as an expert witness to the jury to put forth expert testimony relative to scientific, technical and specialized forensic evidence relating to the availability, likelihood and probability of exculpatory forensic evidence collection.
(3) Not objecting to the court's violation of discretion by not scrutinizing and qualifying all witnesses to be presented as expert witnesses as the Federal and State regulations stipulate.

ADDITIONAL GROUND 3

The prosecution stated at the telephonic hearing on 2/19/16 that the detective in the case indicated that she "thought" "it was a low probability given all the time that had gone by that the likelihood of finding DNA evidence was fairly slim. RP8

The detective in the case presented testimony pertaining to her police experience and qualifications. Nowhere in her presentation did she mention any forensic science formal education training, skills or experience.

RP, Sept. 23, 2014, 152-53

The prosecution presents the detective's testimony as "expert" testimony. However expert testimony must be presented by a qualified expert witness. The detective by state and federal guidelines does not qualify as an expert witness.

ADDITIONAL GROUND 3

Federal Rules of Evidence

Rule 702 states that the witness must have education training or other scientific specialized knowledge in order to be qualified as an expert witness or to present expert opinion.

Law of Evidence in Washington (Chapter 858.02) (A) Opinion testimony states, lay opinion testimony must not be based on scientific, technical or specialized knowledge reserved for testimony of experts under rule 702 - Federal Rules of Evidence (B) Opinions are inadmissible if not based on the witness's personal knowledge.

US v. Freeman 498 F3d 901-05 (9th Cir. 2007)
The Ninth Circuit Court held that the trial court abused its discretion by allowing the detective to rely on hearsay and speculation without knowledge.

ADDITIONAL GROUND 3

The appellant argues that the
prosecution not only violated State
and Federal regulations by presenting
a detective to testify under the guise
of an expert witness, the detective gave
false deceptive junk science information
that misled the jury as to the status
of material exculpatory forensic evidence.

As the investigator for the prosecution,
that had an interest in the outcome
of the trial, the detective brought a
conflict of interest and obvious
prejudice upon the defendant, by
testifying to the likelihood and
availability of and collection of
exculpatory material evidence that
would have vindicated the defendant.

The prosecution's deceptive actions
amount to no less than suppression
and violation of the defendant's due process.

ADDITIONAL GROUND 3

By allowing the prosecution
to present the detective as an expert
witness in order to provide the
jury with junk science under the
guise of expert opinion. The court
violated its discretion.

Rule 701 Federal Rules of Evidence
Amendment to the rule eliminates
proffering of expert testimony by
a lay witness.

Under the amendment a witness
testimony must be scrutinized under
the rules regulating expert opinion
to the extent that the witness is
providing testimony based on
scientific, technical or other specialized
knowledge within the scope of rule
702. US V. KUNZMAN 54 F.3d 1522 (10th Cir. 1995)
Experience alone can qualify a witness
to give expert testimony.

to validate the prosecutors allegations.

Conclusion

For the foregoing reasons Cook requests
this court reverse the order denying his
petition for post-conviction DNA testing.

Dated this 26th day of October 2016

Respectfully submitted

Steven L. Cook
Steven L. Cook

EXHIBIT C.

1 times?

2 A. He said, "It's okay," and then switched.

3 Q. Reached for the other hand?

4 A. Yes.

5 Q. He did that a couple times and switched back and forth?

6 A. Yes.

7 Q. Did the sheet drop?

8 A. No.

9 Q. What happened next?

10 A. He kind of chuckled, and said go ahead and lay down. The
11 headrest pillow was attached to the table, so I rolled
12 onto my stomach, and the drape at that point was still
13 pulled up across the front of me. I rolled across my low
14 back so he could massage my back. He started massaging my
15 back.

16 Q. Okay.

17 A. He did not use the stones at all during that massage.

18 Q. Did he use any oil?

19 A. He did. He used a fair amount of oil.

20 Q. Okay.

21 When you went from the seated area -- well, strike
22 that.

23 Why didn't you raise both arms out?

24 A. Because the drape would have fallen.

25 Q. What would have been exposed?

1 MS. SILBOVITZ: Yes.

2 THE COURT: Ms. Robinson, you are excused.

3 Ladies and gentlemen, I know you had sort of a recess,
4 but my staff has not. We will take our morning recess at
5 this time.

6

7

(Court in recess)

8

9 THE COURT: You may call your next witness.

10 MR. HENDRIX: The State calls Detective Arnett
11 to the stand.

12

13 JACQUELINE ARNETT, witness herein, after being first
14 duly sworn, was examined and
15 testified as follows:

16

DIRECT EXAMINATION

17 BY MR. HENDRIX:

18 Q. Good morning.

19 A. Good morning.

20 Q. Would you please state your name and spell your last name
21 for the record?

22 A. It's Detective Jacqueline Arnett, J-a-c-q-u-e-l-i-n-e.
23 Arnett is A-r-n-e-t-t.

24 Q. What is your occupation?

25 A. I'm a detective with the Lynnwood Police Department.

1 Q. Could you briefly give me an overview of your training and
2 experience?

3 A. I attended a 720-hour basic academy. I have three years
4 of patrol experience and about four years of experience as
5 a detective.

6 Q. What are your duties as a detective?

7 A. I investigate cases that are assigned to me by my
8 sergeant.

9 Q. What types of cases?

10 A. I am a persons crimes detective, so primarily assaults,
11 robberies, things of that nature. I primarily get sexual
12 assault cases.

13 Q. Okay.

14 Were you assigned a case for investigation July 9,
15 2014?

16 A. I was.

17 Q. What was the nature of the case?

18 A. It was a sexual assault assigned to me. Again, the
19 initial investigation is done by a patrol officer usually
20 with a brief interview with the victim. It is then
21 reviewed by my sergeant and assigned out to me.

22 Q. Okay.

23 Who did this case involve?

24 A. It involved Nancy Robinson and Mr. Cook.

25 Q. Is Mr. Cook present in this courtroom today?

If there are any additional grounds, a brief summary is attached to
this statement.

DATED this 26th day of October, 2016.

(Print) Steven Cook

Appellant, *Pro se*.

DOC# 377462, Unit C-320

Monroe Correctional Complex

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P.O. Box 777

Monroe, WA 98272

STATEMENT OF ADDITIONAL
GROUNDS (RAP 10.10)

Page: 19 of 101

1 of her vagina, but also oil?

2 A. Potentially.

3 Q. You are aware that oil was used in a massage on 7-6?

4 A. No, I wasn't aware.

5 Q. So Ms. Robinson didn't tell you that Mr. Cook had oil on
6 his hands when he was massaging her?

7 A. No.

8 Q. Hypothetically, if he did have oil on his fingers that
9 penetrated her vagina, would that be something that would
10 be potentially recovered on a swab?

11 A. It's possible. It depends on the type of oil.

12 Q. Okay.

13 If she had come in and done the examine the same day,
14 would it have been more likely that the transfer of DNA
15 would have been captured by the swab?

16 A. Possibly.

17 MS. SILBOVITZ: Nothing further.

18 THE COURT: Further direct examination?

19

20

REDIRECT EXAMINATION

21

BY MR. HENDRIX:

22 Q. Did you inquire whether she had showered?

23 A. Yes.

24 Q. What was her response?

25 A. She had.

1 A. That would be accurate.

2 Q. When you swab off, you indicated you don't know exactly
3 where the contact was made, if there was any contact, so
4 you are trying to get some touching on the wall with the
5 swab?

6 A. Correct.

7 Q. But you don't know where to touch exactly?

8 A. Correct.

9 Q. So when you put each swab in, are you touching in some
10 different place?

11 A. When I do it, when I put each swab in, I try to move it
12 around to as many areas as I can get. With a blind spot,
13 you can't see the area.

14 Q. There is an area covered there?

15 A. Yes.

16 Q. Ms. Robinson told you she was penetrated by Mr. Cook's
17 finger?

18 A. Yes.

19 Q. She told you it was up to his knuckle?

20 A. She didn't give me any information as to how far.

21 Q. She told you that it happened three times?

22 A. She didn't give me a number.

23 Q. Okay.

24 You indicated that on those swabs, not only would it be
25 possible to get DNA from the swabs that touched the inside