

COURT OF APPEALS
 DIVISION TWO
 OF THE STATE OF WASHINGTON

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 STATE OF WASHINGTON
 BY su

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
Cecil Larcel Morton III)
 (your name))
)
 Appellant.)

No. 37511-7-II
 STATEMENT OF ADDITIONAL
 GROUNDS FOR REVIEW

I, Cecil Larcel Morton III, 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.

Additional Ground I

During the trial, forensic scientist with the WA State Patrol Crime Laboratory, Charles Solomon testified that because of "flushing" that occurs during repeated sexual relations, the vaginal samples would only reveal the semen of the last perpetrator. Forensic expert C. Solomon also testified during trial that two semen samples were recovered from the victims vaginal vault. One being identified as non-mobile, and the other as being "72 hours old or more." (see appendix A – trial transcript excerpt) Kirsten Gleim, a forensic scientist of Emeral City Forensics in Seattle, WA and Thomas Fedor of

Additional Ground 2

Richmond, CA who is also a forensic scientist with the Serological Research Institute both agree that the "flushing" theory, was in fact an error by identifying a vaginal semen sample as "72 hours old or more". If the semen of someone prior to the crime could be found, then so could that of any who participated in the vaginal or oral assault. There were semen samples found both oral and vaginal that could be tested in order to determine who did what. Mr. Morton was asked for his DNA pre-trial by his counsel per request by prosecution for testing and complied. During the trial, defense counsel inquired as to the results of such testing, prosecution replied, "it would cost the state too much time and (see attached)

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

Date: 08-01-2009 Cecil Morton III
 Signature: Cecil Morton III

CERTIFICATE OF SERVICE
 I certify that I mailed
1 copies of SAG
 to Cecil Morton III
 at 5050 1st Ave S
Seattle WA 98148
 Date 08/01/09 Signed su

Money.” So it was not done. (see appendix B – trial transcript excerpt)
It stands to reason that “too much time and money” and the “flushing” theory are nothing more than reasons and titles given in the interest of the prosecution's case, and not that of justice. Subsequently concealing the probability of innocence and that Mr. Morton had not in fact participated in the rapes. It would therefore be in the interest of justice to grant Mr. Morton's motion for DNA testing at the very least.

Mr. Morton had filed a Personal Restraint Petition in September 1999 and was given permission to have DNA testing done. The only reason it was not completed was the lawyer moved out of the country.

Appendix A

1 donors. The enzyme typing just doesn't give good
2 results to bring it down to more likely this individual
3 and any other individual. In the case of DNA, after
4 discussion with the prosecutor and considering the
5 circumstances of the case, we felt that due to the
6 low likelihood of finding any of the first individual,
7 either oral or vaginal semen, that it wasn't a wise --
8 or, expedient use of the State's resources.

9 MS. FRYZEK: Thank you. I have nothing further.
10 I'm sure the defense attorneys may have questions for
11 you.

12 CROSS-EXAMINATION

13 BY MR. TOLZIN:

14 Q Dr. Solomon?

15 A No. Mr. Solomon.

16 Q Multiple donors presumes, I assume, multiple ejacu-
17 lation, is that correct?

18 A That's correct.

19 Q Okay. Now, basically your testimony is you found some
20 spermatozoa in the vaginal swab and the saliva swab,
21 is that correct?

22 A That's correct.

23 Q Now, were these live sperm or were they dead?

24 A They were sperm heads. They didn't have tails on them.
25 If they were to somehow get into the egg why she would

1 probably still be able to cause reproduction, but--

2 Q But the lack of a tail indicates that the sperm has

3 started to die, is that correct?

4 A It indicates that the spermatozoa are non-mobile.

5 Q Okay. And, in fact, sperm can live up to 72 hours, is

6 that correct?

7 A It's been found that in the vaginal vault sperm can be

8 found 72 hours after ejaculation.

9 Q So, you have no idea when the spermatozoa in her

10 vaginal swab arrived there, is that correct?

11 A That's correct.

12 Q Okay. Now, you decided -- my understanding is you did

13 a typing and you can't determine who the donor of the

14 sperm was, is that correct, by the ABO testing?

15 A By the ABO blood typing, that is correct.

16 Q And, you decided not to do DNA or enzyme testing

17 because you wanted to figure out who the first person

18 was, is that correct?

19 A Based upon--

20 Q Well, let me ask you this. Let me rephrase the

21 question. If you had done DNA or enzyme testing, it

22 could have determined who the donor of the sperm was,

23 correct?

24 A Maybe, yes.

25 Q "Maybe." Much more likely to do it than if you didn't

Appendix B

1 A That's correct.

2 Q Okay. You had the opportunity to do that with the
3 enzyme testing--

4 MS. FRYZEK: Objection. Asked and answered.

5 THE COURT: Sustained.

6 MR. TOLZIN: Your Honor, I have not asked him--

7 THE COURT: Counsel, I sustained the objection.

8 Q (By Mr. Tolzin) Regarding the saliva swab, did you
9 have the opportunity to do enzyme testing--

10 MS. FRYZEK: Objection. Asked and answered.

11 THE COURT: Sustained.

12 MR. TOLZIN: For the record, Your Honor, I
13 believe my prior question was towards the vaginal
14 swab.

15 Q (By Mr. Tolzin) Did you do any testing of any
16 clothing that was alleged to have come from Mr. Morton?

17 A No, I did not.

18 MR. TOLZIN: I have no other questions.

19 CROSS-EXAMINATION

20 BY MR. BROUNER:

21 Q Perhaps you can correct me, but aren't enzyme tests
22 and DNA tests referred to as exclusionary tests?

23 Aren't they used to eliminate possible suspects as
24 opposed to identifying them as possible suspects?

25 A Enzyme tests are used to exclude.

1 Q And, you determined -- I believe you said it was not
2 effective use of the State's money to conduct these
3 tests, is that what you said?

4 A Effective use of the State's resources given the
5 scenario that has been proposed.

6 Q So, what you really determined was -- it wasn't
7 effective use of the State's money to conduct tests
8 that might have excluded these two defendants as donor
9 sources for the sperm, isn't that correct?

10 A That's correct.

11 MR. BROUNER: No further questions.

12 MS. FRYZEK: I have nothing further.

13 THE COURT: May Mr. Solomon be excused?

14 MS. FRYZEK: Yes.

15 THE COURT: Mr. Solomon, you're free to go.

16 (The Witness was excused.)

17 KYLE HILLER, having been first duly sworn
18 upon oath, by the Court,
testified as follows:

19 DIRECT EXAMINATION

20 BY MS. FRYZEK:

21 Q Will you state your name and spell your last name,
22 for the record.

23 A My name is Deputy Kyle Hiller. H-I-L-L-E-R.

24 Q And, what is your occupation?

25 A I'm a deputy sheriff with the Pierce County Sheriff's