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NO. 89620-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JONATHAN LEE GENTRY,

Appellant.

---

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

---

OPENING BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. The trial court erred in denying the Motion to Recuse.
2. The trial court erred in granting the State's Motion to Deny Further Postconviction DNA testing.
3. The trial court erred in entering the following Findings of Fact in support of its Order Denying Further Postconviction DNA Testing:

**IV**

That in light of the new test results, Gentry is unable to Show a "reasonable probability of his innocence."

**V**

That Gentry has failed to show the "likelihood that [further testing of] the DNA evidence would demonstrate innocence on a more probable than not basis."

4. The court erred in entering the following Conclusions of Law in support of its Order Denying Further Postconviction DNA testing:

**IV**

. . . . The issue before this Court, therefore, is whether, in light of the testing results obtained on the shoelace found in Gentry's closet, he continues to satisfy the substantive requirements of Subsection (3) [of RCW 10.73.170]; namely, whether he has shown "the likelihood that [further testing of] the DNA evidence would demonstrate innocence on a more probable than not basis."

**V**

Gentry ... fails to meet the substantive requirements of RCW 10.73.170(3), and he is not entitled to further DNA testing....

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the defense Motion for Recusal of Judge filed below require the judge, who had made no discretionary rulings in the case, to recuse herself and transfer venue to another judge?

2. Where the newly assigned trial judge (a) had worked in the prosecutor's office while it was prosecuting this case in what the defendant claims to have been a racially discriminatory and unconstitutional manner, (b) had worked with one of the accused trial deputies while in the prosecutor's office, and (c) was married to a Bremerton Police Officer who aided in maintaining the perimeter of the crime scene in a murder case involving challenges to the integrity of evidence, did the denial of the Motion for Recusal violate the appearance of fairness?

3. Is an order for DNA testing pursuant to RCW 10.73.170 of numerous evidence items subject to *de novo* review and reconsideration after each testing result?

4. Where DNA testing of numerous evidence items has been ordered pursuant to RCW 10.73.170, does a single inculpatory result justify vacation of the Order and a prohibition on the testing of additional evidentiary items, where (a) fully exculpatory results from the testing of

the additional evidentiary items still could establish the defendant's innocence on a more probable than not basis, and (b) the additional evidentiary items were not tested earlier because the prosecution failed to recover them from one of their trial experts?

## C. STATEMENT OF THE CASE

### 1. Procedural history

Jonathan Gentry is under sentence of death imposed in 1991 for the 1988 murder of Cassie Holden in Kitsap County. His conviction and sentence was affirmed on appeal in 1995, *State v. Gentry*, 125 Wn.2d 570, 888 P.2d 1105 (1995), and postconviction relief was denied in 1999. *In re Gentry*, 137 Wn.2d 378, 972 P.2d 1250 (1999).<sup>1</sup> Following the postconviction denial, Mr. Gentry was denied relief in habeas proceedings in federal court. *Gentry v. Sinclair*, 795 F.3d 884 (9<sup>th</sup> Cir. 2013), *cert. denied*, 134 S. Ct. 102 (2013).

On February 3, 2011, during the pendency of the federal habeas proceedings, counsel for Mr. Gentry filed a Motion in the Kitsap County Superior Court for post-conviction DNA testing. CP 1-22 at 16-18. The

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<sup>1</sup> On January 23, 2014, this Court denied a second postconviction petition seeking to have the standard set out in *State v. Monday*, 171 Wn.2d 667, 257 P.3d 551 (2011), applied to his conviction and sentence. *In re Personal Restraint of Gentry*, 179 Wn.2d 614, 316 P.3d 1020 (2014). On February 12, 2014, Mr. Gentry filed a Motion for Reconsideration of that decision, pointing out that it had not addressed his consolidated Motion to Reconsider the original RCW 10.95.100 sentence review. That Motion remains pending.

Motion set out:

that DNA testing has advanced since the time of trial such that the testing now requested would be far more accurate and informative than DNA testing available at the time of his trial. The requested testing using current technology would be significantly more accurate than prior DNA testing and would provide significant new information that would likely exonerate Mr. Gentry of this murder.

CP 1.

The Motion was supported by extensive documentation of the significance of the DNA evidence at trial, advances in DNA technology since trial, and evidence not submitted at trial pointing to other possible suspects. CP 23-471; *see* pages 10-20, below. The requested testing sought mtDNA testing and family comparisons of shaft hairs found on Cassie Holden's body to members of her family and to other potential sources of the hair from other African-Americans; CODIS and NDIS comparison of additional hairs with root balls to hair samples from other potential African-American sources; STR/DNA and CODIS and NDIS testing of the hairs or extract of roots found on the Cassie Holden's thigh or T-shirt; STR/DNA testing of blood drops on shoes seized from Mr. Gentry's home which were not previously tested, and principal STR/DNA testing of the right and left shoe laces from these shoes. CP 16-18.

In its response, the State agreed “that Gentry’s allegations likely entitle him to testing under the statute [RCW 10.73.170],” subject only to the qualification that:

The State maintains the right to object [sic] the relevance and admissibility of testing results in any potential future proceedings and additionally does not concede the defendant’s right to obtain DNA samples and testing from non-parties.<sup>2</sup> The parties have agreed, however, to postpone litigation of these issues until after testing of the existing evidence.

CP 483-484.

After hearing argument (RP 7/25/11), Former Kitsap County Superior Court Judge Karlynn Haberly granted the defense DNA testing motion. CP 486-493. The Order Granting DNA Testing required testing by the Washington State Patrol Crime Lab (“WSP Crime Lab”) of evidence in the possession of the Washington Supreme Court (19 items), the Kitsap County Sheriff’s Office (24 items), the WSP Crime Lab itself (2 items), and Forensic Science Associates (“FSA”) in Richmond, California, a private company with which the prosecution contracted for the DNA analysis it offered at trial (11 items). *See* CP 487-491. The DNA Testing Order was approved by this Court and incorporated into an Order of this Court releasing the evidence in its possession to the WSP Crime Lab. CP

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<sup>2</sup> The third parties the defense had asked to be included in the tests were members of Cassie Holden’s family, and three African-American friends of her brother Jamie who had visited or played with him on the day she disappeared. *See* CP 3, 16-17, and pages 10-11, below.

534, 543, 545.

The DNA Testing Order provided for a preliminary assessment by the Crime Lab so that the parties could confer further about what type of testing should be done. CP 492. On September 7, 2011, the Crime Lab responded that it had the “capacity to perform appropriate DNA testing on the submitted items.” CP 494. With regard to specific types of evidence, the letter indicated that the WSP Crime Lab had the capacity to obtain results from hairs with a root attached, but for hairs without a root “kits other than those used by WSPCR must be employed”. *Id.* It also indicated that the items most likely to yield probative results and sufficient DNA for testing were “those previously typed by an older DNA method”—and that records indicated “DNA extracts from these items reside in the Forensic Science Associates run by Edward T. Blake.” CP 495. For this reason, the WSP Crime Lab recommended “that these extracts be obtained from Dr. Blake and typed using the Identifier Plus typing kit prior to any attempt to extract and quantitate DNA from the original items.” CP 495.

On May 18, 2012, Judge Haberly granted a motion to release the left shoelace, which was in the record as trial exhibit 69, to defense expert Kay Sweeney of KMS Forensics for microscopic examination. CP 499-502, 503-504. On March 22, 2013, KMS Forensics issued a report which

raised questions about the nature of the bloodstains on the laces and the handling of the laces before their initial testing, and which concluded that the “overall physical characteristics of the red/brown stains present on the shoelace sections lack the necessary features for concluding that they were the result of blood spatter.” CP 571-572.

However, the items in the possession of Forensic Science Associates (FSA)—the actual items testified about at trial and identified by the WSP Crime Lab as the extracts which should be typed prior to testing—were never made available for testing. This was because Edward Blake, the prosecution trial witness associated with FSA took the position that the evidence is his work product and intellectual property. CP 485, 522; *see* RP (9/20/13) at 22. Although Mr. Blake reportedly indicated he would likely return the items for testing if requested to do so by the Kitsap County Prosecutors, despite defense requests the prosecutor never attempted to obtain the evidence and, on July 24, 2013, ultimately declined to do so. CP 546-548; RP(9/20/13) at 15.

On July 16, 2013, without waiting for the FSA evidence to be released, the WSP Crime Lab issued an unsworn report regarding its testing of one item of evidence, the left shoelace, indicating that:

The partial DNA profile obtained from the left shoelace stains (25-9B) matches the DNA profile of C. H. (from item 2-8). The estimated probability of selecting an unrelated individual at

random from the U.S. population with a matching profile is  
1 in 110 trillion.

CP 519-520, 673.

Upon receiving this initial report, the State moved to deny any further DNA testing, asserting that “[t]here is now no possibility that the State has convicted the wrong man.” CP 505-520. The defense opposed the motion, pointing out that numerous additional items remained to be tested, particularly the hairs and extracts in the possession of FSA, and the KMS Forensics report raised questions about the integrity of the evidence on the shoelaces. CP 521-576.

By this time, Judge Haberly had retired and the case was administratively reassigned to Judge Jennifer Forbes. Prior to the hearing on the State’s motion, the defense suggested Judge Forbes should recuse because she worked for the Kitsap County Prosecutor’s Office during the time that office was defending its actions in the prosecution of Mr. Gentry both on direct appeal and collateral proceedings. RP (9/20/13) at 7-9; SuppCP 693. In declining to recuse on the basis of this informal request, Judge Forbes acknowledged her tenure with the Prosecuting Attorney’s office and her familiarity with two of the Prosecutors from that office who worked on Mr. Gentry’s case, trial counsel Brian Moran and appellate counsel Pamela Loginsky. RP (9/20/13) at 3. She also disclosed her

husband was working for the Bremerton Police Department at the time of the investigation of the case and participated by helping the Kitsap County Sheriff's Office maintain the perimeter of the crime scene. CP 580-663; RP (9/20/13) at 6. Defense counsel then orally moved for recusal and asked that the motion be heard by another judge. *Id.* at 9. Judge Forbes denied the motion to recuse and the request to transfer the recusal motion, again inviting defense counsel to submit additional information in a written motion. *Id.* at 9.

Judge Forbes had not made any discretionary rulings in the case, so defense counsel filed a formal Motion for Recusal, attaching as exhibits documentation of Judge Forbes' work with the Kitsap County Prosecuting Attorney's Office, and the claims that had been made and were pending regarding that office's handling of Mr. Gentry's case. CP 580-663. The Motion pointed out that there were claims that had been made throughout the appellate proceedings of racially discriminatory actions and the withholding of exculpatory evidence by the Kitsap County prosecutors—including one, Brian Moran, who was a contemporaneous colleague of Judge Forbes when she was in that office. CP 582-587. The Motion also pointed out that the Bremerton Police Department had taken part in the search for the victim of this homicide and had assisted in maintaining the perimeter of the crime scene, and that the DNA motion implicated issues

regarding the integrity of the evidence gathering in the case. CP 582-584.

Judge Forbes summarily denied the Motion, treating it (despite her previous invitations) as a motion for reconsideration disfavored under Kitsap County Local Rules (CP 671)—and simultaneously, without hearing any further evidence, Judge Forbes then granted the state’s Motion to Deny Further DNA testing. CP 672-677. This appeal timely followed. 678-689.

## **2. Facts underlying the Order Granting DNA Testing**

On June 11, 1988, 12-year-old Cassie Holden came from her father’s home in Idaho to visit with her mother in Bremerton. *State v. Gentry*, 125 Wn.2d at 579; RP(5/14/91) 3663-3664, 3691, 3698.<sup>3</sup> Two days later, at around 4:30 in afternoon of June 13, Cassie and her 16-year-old half-brother Jamie, who lived with their mother, left the mother’s house; Jamie was supposed to go to a friend’s house and Cassie was going to explore the neighborhood. *State v. Gentry*, 125 Wn.2d at 579; RP(5/14/91) 3701; RP(5/15/91) 3826.

Jamie returned at dinnertime without Cassie. *See* CP 2, 395.

When asked where he had been, Jamie said he had been with a group including a boy named Tyler who he said was “trouble.” *Id.* “Tyler’s”

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<sup>3</sup> References to the verbatim report of proceedings at the trial in this case signify the date of the proceedings; *e.g.* RP(5/14/91) refers to the transcript of proceedings on May 14, 1991.

full name is Tyler Williams. *See* CP 441. Tyler Williams is African American and had been at Jamie's house earlier that day playing video games. RP (5/17/91) 209. Shortly after Jamie came home, Tyler Williams and another African American boy, Akeem Jones, came over to Jamie's house. CP 442-44. The three boys had been playing together that afternoon, along with a third African American boy, Tony Thompson. *Id.*

Unable to locate Cassie, Mrs. Holden called police. *State v. Gentry*, 125 Wn.2d at 579; RP(5/15/91) 3700-3703, 3716, 3718. The police investigation initially focused on Jamie Holden and the friends who had been at his house the day of Cassie's disappearance. *See* CP 2-3; 417; 431; 436-7; 442-44; 462. After Cassie's body was found, police investigators took hair, saliva and blood samples from Jamie and from Mrs. Holden. RP(5/23/91) 46, 54-55; CP 378.<sup>4</sup>

However, the focus of the investigation shifted a few days later, when a man named Frederick Buxton reported that he had seen a black man walking on the trail near the golf course on the afternoon Cassie disappeared. *State v. Gentry*, 125 Wn.2d at 581; RP(5/15/91) 3815-3817; RP(5/21/91) 198. When, a month later, police published a composite drawing based on Mr. Buxton's description in a local paper, a woman

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<sup>4</sup> Jamie Holden's hair samples were compared to a Caucasian type pubic hair found on Cassie's thigh, but they reportedly did not match. RP(5/23/91) 46, 54-55.

named Eilene Starzman reported that she and her daughter had also seen a black man that afternoon, near her house, approximately a mile from the crime scene. *State v. Gentry*, 125 Wn.2d at 581; RP(5/17/91)191; RP(5/20/91) 124-134; RP(5/21/91) 145-146, 149-150, 158. Ms. Starzman led the police to the house where Jonathan Gentry had been living with his brother Edward Gentry and family. *State v. Gentry*, 125 Wn.2d at 581-582; RP(5/21/91) 154-155; RP(6/6/91) 4692. From that point onward, the police focused their investigation on Jonathan Gentry, who had been in jail awaiting trial on an unrelated rape charge. RP(7/1/91) 5675, 5679. Mr. Gentry was not actually charged with the murder of Cassie Holden until February, 1990. *In re Gentry*, 137 Wn.2d at 385.

Although he was the last person known to have seen Cassie alive, Jamie Holden did not testify at Mr. Gentry's trial. Neither did any of the three African American boys Jamie was with that afternoon. Instead, the State's case against Mr. Gentry rested on the identification testimony described above, the testimony of three "jailhouse informants",<sup>5</sup> and the results of primitive DNA and serology testing. The testing was done on

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<sup>5</sup> At trial all three of the informants swore that they received nothing in exchange for their testimony. *In re Gentry*, 137 Wn.2d at 396-397; RP(5/31/91) 4441; RP(6/3/91) 37; RP(6/6/91) 4491. After hearing testimony from and about these informants, Federal Judge Robert Lasnik found that the failure to disclose contrary impeachment evidence about two of the informants violated the prosecution's *Brady* obligations. *See* CP 8-91. But on this *Brady* issue and other constitutional claims, he found any error was nonprejudicial, primarily relying on the DNA evidence presented by the State. *See* CP 91-93, 109-10.

items taken during a search of Mr. Gentry's residence approximately two months after the murder, and on two of a number of hairs found on Cassie Holden's body during the autopsy. *State v. Gentry*, 125 Wn.2d at 579-580, 610-611; RP(6/6/91) 46-49.

Most of the many hairs found on Cassie's body were forensically identified as her own. *State v. Gentry*, 125 Wn.2d at 579; RP(5/23/91) 56. The exceptions were a medium brown hair, a probably Caucasian pubic hair recovered from her left leg, RP(5/23/91) 45-46, 54, a short red Caucasian hair fragment on her shoe, *Gentry*, at 580; RP(5/23/91) 51-52, and two hairs, collected from her t-shirt during the autopsy, that were said to have "Negroid" characteristics. *State v. Gentry*, 125 Wn.2d at 580; RP(5/23/91) 54.

At trial, the State went to great lengths to establish that the latter two hairs must have been her murderer's because Cassie Holden had no contact with black people in life. *State v. Gentry*, 125 Wn.2d at 610-611; RP(5/14/91) 3665, 3694, 3704, 3709; RP(5/14/91) 3665, 3694, 3709; RP(5/15/91) 3765, 3797; RP(5/17/91) 277, 279, 257; RP(5/23/91) 47-48. In closing argument, the prosecutor said to the jury

There's absolutely no doubt, ladies and gentlemen, in this case, that the person that we were looking for, that the police were looking for, the person who was responsible for Cassie Holden's death was a black individual. . . [and] Cassie was not around black individuals. . . there were no blacks that Cassie was in contact with when she was in Idaho. There were no blacks that she used laundry facilities or shared laundry facilities with blacks. . . . And Terri Holden told you that there were no blacks in the home where she had been.

RP(6/25/91) 5394-5395. However, in fact, as described above, Cassie's half brother Jamie did have African American friends who had been to the house Cassie was visiting, even on the very day that Cassie disappeared. RP(5/15/91) 3819, 3826-3827; RP(5/17/91) 209. Jamie Holden also told police that he and Cassie had encountered one of those friends, Tyler Williams, along with two small children (apparently related to him), the night before Cassie's disappearance—and one of the children had sat on Cassie's lap for as much as a half hour. *See* CP 401-404.

At trial, forensic scientists at the WSP Crime Lab testified that one of the "Negroid" hairs found on Cassie's t-shirt was microscopically similar to the arm hairs of Jonathan Gentry and his brother Edward. *State v. Gentry*, 125 Wn.2d at 580; RP(5/23/91) 54. Microscopic examination of the other "Negroid" hair was inconclusive. RP(5/23/91) at 47-51. The first of these hairs was subjected to DNA testing and was found to have a DQ-alpha type the same as Edward Gentry but different from Jonathan

Gentry's. *Gentry*, 125 Wn.2d at 580; RP(6/17/91) 5003, 5007-5016.<sup>6</sup> Testimony indicated that about 6% of the black population had this DQ alpha type. *Gentry*, 125 Wn.2d at 581; *In re Gentry*, 137 Wn.2d at 403; RP(6/17) 5041. Tests on the other "Negroid" hair were inconclusive. RP (5/23/91) at 47-51. There was no evidence or testimony regarding any comparison of the hair or its DQ-alpha type to anyone else, including the three African-American boys who were with Jamie Holden that afternoon, and there was no testimony regarding the likelihood that the source of the hair was one or more of those individuals (or the unknown children with Tyler Williams that Cassie Holden had contact with the night before).

The "Caucasian" pubic hair found on Cassie's thigh could not have come from Jonathan Gentry or his brother. RP (5/23/91) at 46. It did not come from Cassie or her brother Jamie. *See* note 4, above. Its source remains a mystery. Washington State Patrol Crime Lab reports offered at trial indicated the ABO testing of laces of a pair of shoes taken in a search of Mr. Gentry's house was inconclusive on the left shoelace but consistent with type O, Cassie Holden's ABO blood type, on the right shoelace. *State v. Gentry*, 125 Wn.2d at 580-581; RP(5/28/91) 4027. But there was also an indication of type A blood on the right shoelace. RP(5/28/91)

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<sup>6</sup> Testimony regarding this finding was qualified by the fact this hair was also found to have contamination. RP(6/17/91) at 5007-5013.

4013, 4014, 4027; RP(5/28/91-p.m.) 29. Bloodstains on both shoelaces were found to be consistent with Cassie's Gm type. *State v. Gentry*, 125 Wn.2d at 580-581; RP(5/28/91) 4037-4039; RP(5/29/91) 4102, 4110; RP(5/31) 4306-4308. Type O blood was also found on a pair of Jonathan Gentry's pants taken in the search of his home, but testing showed that blood was *not* Cassie Holden's. RP(6/17/91) 5001-5003.

The trial testimony indicated that initial PCR DNA testing done on both shoelaces seized from the Gentry house produced no results. RP(6/17/91) 5023. To compensate for this, the prosecution's expert, Dr. Edward Blake, increased the amounts of polymerase used in testing and the number of amplifications, and made other significant adjustments to try to get a result. RP(6/17/91) 5022-5024, 5057. With these adjustments, Dr. Blake said he found that the blood on both shoelaces had the same DQ-alpha type as Cassie Holden. RP(6/17/91) 5032, 5034, 5036. Dr. Blake acknowledged there were indications of the presence of alleles inconsistent with Cassie Holden's DQ alpha type—but he claimed that this meant only that there was DNA on the shoelace that was not associated with the blood being tested. RP(6/17/91) 5032-5036.

Dr. Blake further amplified his results by using a statistical device, the "product rule," in which he multiplied together the probabilities from the ABO, GM, haptoglobin and DQ Alpha testing, while assuming that the

blood on the two shoelaces was from the same individual. RP(6/17/91) 5038-5039. Using this statistical device, Dr. Blake concluded that only 1 of every 555 people would have the different characteristics that were shared by the blood on the two shoelaces and Cassie Holden's blood. *In re Gentry*, 137 Wn.2d at 403; RP(6/17/91) 5038-5039.

Witnesses called in Mr. Gentry's defense challenged both the methods used in the DNA and serology testing, and the statistical meaning of the testing. Dr. Glen Evans of the Salk Institute noted that in DQ alpha testing the contamination on the shoelaces showed on the control sample as well as the evidentiary sample, indicating that there was DNA on the shoelaces from a source other than blood—which made it impossible to determine whether the identified genotype was from the blood or contamination. RP(6/18/91) 5141-5206-5208, 5228.

Dr. Benjamin Grunbaum, A biochemist formerly with NASA, disagreed with the prosecution's claims about Hp testing because there were unexplained artifacts which appeared in the test results sufficient to invalidate the result. RP(6/19/91) 110, 116, 119. Dr. Grunbaum and another biologist, David Adler, testified that they believed if any of the test results were unreliable, that would change the results of the product rule: "If you're multiplying numbers together and you're multiplying numbers that are the results of unreliable tests, then what you're doing

really is multiplying your error and that's a problem." RP(6/19/91) 121; RP(6/20/91) 46-47.

The DNA evidence was nonetheless admitted and relied on at trial and on appeal. In postconviction, Mr. Gentry's PRP lawyers claimed that trial counsel were ineffective because they did not call an expert to interpret the confusing statistical analysis the prosecution used to bolster its DNA results, and in support of that they presented evidence from such an expert named Dr. Sandy Zabell. Dr. Zabell's declaration showed that, when the correct question is asked—"given a person and his brother, what is the chance that at least one of them would match at least one of the DQ-alpha types of the two hairs tested?"—the probability is almost 45%. *See* CP 129-30. Dr. Zabell also attested that—even assuming that the test results which were multiplied together in applying the product rule were reliable results, and reflected independent phenomena, the probability of a match was *at most* 1 in 55, which would include over 4,000 people in Kitsap County alone.<sup>7</sup> *Id.*; *see In re Gentry*, 137 Wn.2d at 403. The lower frequency of occurrence indicated by the prosecution's trial experts was improperly based on the unproved assumption that the blood on the

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<sup>7</sup> According to the U.S. Census Bureau there were an estimated 239,769 people living in Kitsap County in 2008; 1.8% of them or one in every fifty-five people would be 4,359 people.

shoelace was Caucasian. *Id.*<sup>8</sup>

In considering this post-conviction claim, this Court held that there was no prejudice to not challenging the DNA and serology statistics, and that Dr. Zabell was wrong in the analysis of the probabilities with respect to one of the Negroid hairs being similar to Edward Gentry's hair. *In re Gentry*, 137 Wn.2d at 403. However, in doing so the Court misstated a critical fact—saying that one of the two hairs at issue was Caucasian when the evidence was both were Negroid. *Id.*; see CP 130.

The upshot of the trial and postconviction proceedings in Mr. Gentry's case was that his conviction and death sentence were upheld despite serious questions about the reliability of every piece of evidence used to convict him—including DNA evidence that was questionable, even by the relatively crude standards of the science at the time.<sup>9</sup>

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<sup>8</sup> Like those of the experts who testified at Mr. Gentry's trial, Dr. Zabell's statistics did not address the possibility that any of the hairs on Cassie Holden's body came from one of the several African American children Cassie and her brother reportedly had contact with the day before, and the day of, her disappearance.

<sup>9</sup> Research done and published since Mr. Gentry's trial has shown that hair comparisons are scientifically questionable and responsible for a large percentage of wrongful convictions detected by DNA testing. See Brandon L. Garrett & Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Convictions*, 95 VA. L. REV. 1, 47 (2009) (65 of 137 DNA exonerations involved cases with hair comparison testimony); Paul C. Giannelli, *Microscopic Hair Comparisons: A Cautionary Tale*, Case Research Paper Series in Legal Studies Working Paper 2010-17 (April 2010), CP 333-48.

Despite this, the State has continued to rely almost exclusively on these old DNA results in its arguments respecting Mr. Gentry's guilt. In fact, in a Response Brief recently filed in the Ninth Circuit habeas appeal, the State argued that the prosecution's belatedly-acknowledged failure to disclose exculpatory evidence and presentation of perjured testimony, as well as any ineffectiveness of Mr. Gentry's trial counsel—were all harmless and immaterial because Mr. Gentry's guilt was so conclusively established by all this DNA evidence. *See* CP 177, 202-06, 228.

**3. Facts relevant to Motion to Recuse**

At the hearing on September 20, 2013, Judge Forbes noted that she received a letter from defense counsel expressing concern that she had worked in the prosecutor's office from 1996 to 2006, during the time when the office was actively involved in prosecuting this case on appeal and in postconviction proceedings. RP(9/20/13) 2, 5; *see* SupCP 693. Judge Forbes stated that she had never met Mr. Clem, the elected prosecutor who sought the death penalty against Mr. Gentry, or Irene Asai, one of the trial deputies, but acknowledged she knew and had worked with Brian Moran, the other trial deputy and knew Pamela Loginsky, who represented the office on the appeal and in postconviction proceedings in state court. RP(9/20/13) 2-3, 8.

Judge Forbes also disclosed that her husband had been a police officer with the Bremerton Police Department and that he had worked as a back-up to the Kitsap County Sheriff's Office on crime scene containment, but had not written a report and could not recall testifying in the case. RP(9.20/13) 6. Judge Forbes said that she would only recuse herself if the defense intended to introduce evidence or argument about misconduct by people she had already formed an opinion about or was predisposed to believe. RP(9/20/13) 8.

Defense counsel explained that Mr. Gentry's case had raised and was still raising issues of prosecutorial misconduct and *Brady* violations in the direct appeal, in the PRP proceedings and in federal court; and Judge Forbes worked in the office while the case was being actively litigated. RP(9/20/13) 2-4 7. His oral motion also pointed out there had been allegations of misconduct by the Sheriff's Office as well and possible concerns over the integrity of the evidence. RP(9/20/13) 3-7. He argued that this raised concerns of the appearance of fairness, at least:

If I explain to my client, a lawyer from this prosecutor's office, who it is contended was racially discriminatory and withheld evidence from him, is now going to be the judge in your case, it's not going to seem fair to him. And I don't think it would seem fair to most people. And it has nothing to do with Your Honor personally, but it does have to do, I think, with the professional association and the appearance of fairness in that kind of circumstance.

RP(9/20/13) Counsel asked to make a formal motion for recusal and requested for that to be heard by a different judge. RP(9/20/13) 7, 9.

Judge Forbes ruled that motions to recuse are heard by the judge asking to be recused and again declined to recuse herself on the oral motion, saying “I’m not recusing myself based on what’s been presented. If you want to provide information, again, I’m happy to look at it, but at this point, I’m not going to recuse myself.” RP(9/20/13) 8-9.

After the hearing, accepting Judge Forbes’ invitation, counsel for Mr. Gentry filed a written motion for recusal on the grounds that “an objective and reasonable observer, knowing all of the relevant facts, would reasonably question the Judge Forbes’ impartiality.” CP 580. The Motion set forth as facts supporting recusal that Mr. Gentry’s conviction and sentence were defended by the Kitsap County Prosecutor’s Office in state court until 1999; and that the actions of the Kitsap County Prosecutor’s Office had been and remained at issue in federal habeas proceedings and in *State v. Gentry*, No. 58415-0 and *In re Gentry*, 86585-0. CP 580-582. Relevant issues on review in these proceedings, noted in the Motion, included claims (a) that the Kitsap County Prosecutor’s Office acted in a racially discriminatory manner in the trial and in seeking the death penalty; (b) that the trial prosecutors, Brian Moran and/or Irene Asai, violated their constitutional obligations by withholding exculpatory

evidence about benefits to the jailhouse informants and presenting perjured testimony about those benefits; (c) that Mr. Moran withheld notes of interviews that appear to contradict the informants' racially inflammatory trial testimony that Mr. Gentry referred to the murder victim as a "bitch" ; and (d) that the prosecutors in that office were aware of but did not disclose a history of misconduct by lead Kitsap County Sheriff's Detective Douglas Wright. *Id.*; see *Gentry v. Sinclair*, 795 F.3d 884 (9<sup>th</sup> Cir. 2013), *cert. denied*, 134 S. Ct. 102 (2013). In addition to the trial prosecutors, the record submitted indicated that at least one other Kitsap County deputy prosecutor, Katherine Collings, knew that one of the jailhouse informants was a paid police informant, and the recusal motion alleged that appellate prosecutor Pamela Loginsky, who worked on both the appeal and the state's opposition to the personal restraint petition, knew or should have known the truth about the undisclosed and misrepresented facts. CP 581. The motion also pointed out that the Bremerton Police Department took part in the search for the missing girl and other aspects of the investigation, including maintaining the perimeter of the crime scene, and Judge Forbes' husband Rob Forbes was the past Chief of the Bremerton Police Department and member of the department for 25 years up to 2005, and took part in maintaining the perimeter of the crime scene. RP(9/20/13) 6.

Judge Forbes treated the written Motion for Recusal of Judge to be a Motion for Reconsideration and summarily denied it without further hearing or explanation. CP 671.

**4. Facts relevant to the Order Denying Further DNA Testing**

Judge Forbes simultaneously granted the State’s Motion to Deny DNA Testing. CP 672-5. She did so on the basis of a single unsworn laboratory report on one test of one item of evidence. She did so without taking any testimony, although she was informed that most of the critical items of evidence had not been tested, as the WSP Crime Lab had recommended, and that this was because Ed Blake of FSA refused to release the material absent a request from the Kitsap County Prosecutor’s Office, and the Kitsap County Prosecutor’s Office made no such request. CP 547-549. The untested evidence included critical items testified about at trial: the extracts from hairs found on the body, including those which were said to be similar to Mr. Gentry’s brother’s DQalpha profile,<sup>10</sup> the extracts from Mr. Gentry and his brother—and the original extracts taken from the shoelaces themselves. See VRP(6/17/91) at 4965-5121.

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<sup>10</sup> The “Negroid” hair was the centerpiece of the case from the pretrial investigation—in which the search warrant affidavit for the seizure of Mr. Gentry’s shoes and laces said “[t]here was no apparent explanation for the Negroid hairs on the Caucasian victim”—through the appeal, in which this Court relied on the “Negroid” hair as justification for asking virtually every witness about the absence of black people in the victim’s life. *State v. Gentry*, 125 Wn.2d at 579-580, 606.

#### **D. ARGUMENT**

##### **1. THE MOTION TO RECUSE WAS EFFECTIVELY AN AFFIDAVIT OF PREJUDICE WHICH THE JUDGE HAD NO DISCRETION TO DENY.**

Once Judge Forbes announced that she had received the letter from defense counsel and clarified that counsel perceived her to be too biased to hear the case, the judge should have been divested of authority to hear anything further on the case. RCW 4.12.040; RP(9/20/13) 2-5. The fact that the letter and later motion were not in the form of an affidavit of prejudice should not change that result. Judge Forbes made no discretionary ruling in the case and Mr. Gentry was entitled to have a different judge upon request.

Affidavits of prejudice are the means by which litigants in Washington can prevent a judge who they perceive to be biased from hearing their case. *LaMon v. Butler*, 112 Wn.2d 193, 201, 770 P.2d 1027 (1989). Under RCW 4.12.040 and .050, a party is entitled, as a matter of right, to a change of judges on the timely filing of a motion and affidavit of prejudice against a judge about to hear his case. Such a motion and affidavit presents no question of fact or discretion. Prejudice is established by the affidavit and the judge to whom it is directed is divested of authority to proceed further into the merits of the action. *State v. Dixon*, 74 Wn.2d 700, 702, 446 P.2d 329 (1968). A proceeding that takes place

after the erroneous denial of an affidavit of prejudice has no legal effect. *Harbor Enters., Inc. v. Gudjonsson*, 116 Wn.2d 283, 291, 803 P.2d 798 (1991).

A party has a right to a change of judges if the judge is prejudiced against his cause, not just where there is personal prejudice against a party or attorney appearing in the case. *State v. Franulovich*, 89 Wn.2d 521, 525, 573 P.2d 1298 (1978).

In *Garvey v. Skamser*, 69 Wn. 259, 262-263, 124 P. 688 (1912), the respondent argued that the affidavit was insufficient because it averred only that the affiant “believes” the judge to be prejudiced not that he actually was. The court held the statute should be interpreted to suit its purpose: “The purpose of the statute is to give a change of judges upon a timely application, where the ‘party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge.’ The affidavit is sufficient.” *Id.*

In *State v. Ryncarz*, 64 Wn. App. 902, 903, 826 P.2d 1101, *review denied*, 119 Wn.2d 1020 (1992), the Court held that in such applications “form should not prevail over substance.” In *Ryncarz*, the pro se litigant’s affidavit was rejected because it had not been signed before a notary. The appellate court held that the judge or clerk of the court could have corrected the deficiency and that “[w]hen such a simple remedy is

available and the result is otherwise so prejudicial, form should not prevail over substance. Mr. Ryncarz was entitled to a change of judge.” *Ryncarz*, 64 Wn. App. at 903.

Here, it was clear that defense counsel believed the judge could not fairly hear the proceeding, and counsel’s understanding of the facts was confirmed by the court, so recusal should have been granted.

RP(9/20/2013) 9. Mr. Gentry had a right to a proceeding before an unbiased judge and had requested the Judge Forbes recuse herself. No previous affidavit of prejudice has been filed in the case. This was tantamount to an affidavit of prejudice, and, at the least, she should have indicated that she would honor such an affidavit, as the statute requires, prior to summarily issuing a ruling disposing of the case.

2. **EVEN IF RECUSAL WAS NOT AUTOMATIC, THE JUDGE SHOULD HAVE RECUSED HERSELF TO PRESERVE THE APPEARANCE OF FAIRNESS, BECAUSE HER IMPARTIALITY WAS REASONABLY SUBJECT TO QUESTION SINCE SHE WORKED IN THE KITSAP COUNTY PROSECUTOR’S OFFICE WHILE IT WAS PROSECUTING THIS CASE AND DEFENDING ITSELF AGAINST CLAIMS OF MISCONDUCT IN APPEAL AND POSTCONVICTION PROCEEDINGS.**

The Kitsap County Prosecutor’s Office defended Mr. Gentry’s prosecution and death sentence against claims of racial bias and misconduct over many years, including years Judge Forbes was employed

there. She worked with one of the trial attorneys, Brian Moran, and knew Pamela Loginsky, who represented the office on appeal and in postconviction proceeding. RP(9/20/2013) 8. Those associations alone should have disqualified her by her own test.

Further, the Bremerton Police Department took part in the investigation of the crime while Judge Forbes's husband was a member of the department. The integrity of the investigation, including the crime scene and evidence found there and elsewhere during the investigation were potentially at issue in the proceeding.

On these facts, any fair and impartial observer would reasonably question Judge Forbes' ability to be fair and unbiased, and she should have recused herself.

As a matter of common law, state and federal constitutional law and Canon 3(D)(1) of the Code of Judicial Conduct, a defendant is guaranteed proceedings before an impartial judge. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 882-883, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009); *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 2d 942 (1955); Wash. Const, art. 1, section 16 (prohibiting a judge from conveying his or her personal view of the merits of the case to the jury); *State ex rel. McFerran v. Justice Court*, 32 Wn.2d 544, 202 P.2d 927 (1949); *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972).

The judge must not only be impartial, but appear to be impartial. *Murchison, supra; In re Sanders*, 159 Wn.2d 517, 145 P.2d 1208 (2006); *Diimmel v. Campbell*, 68 Wn.2d 697, 699, 414 P.2d 1022 (1966). “The test for whether a judge should disqualify himself where his impartiality might reasonably be questioned is an objective one.” *State v. Leon*, 133 Wn. App. 810, 812, 138 P.3d 159 (2006) (citing *Sherman v. State*, 128 Wn.2d 164, 206, 905 P.2d 355 (1995)). Ultimately, the legitimacy of the judicial branch depends on its reputation for impartiality and nonpartisanship. *Mistretta v. United States*, 488 U.S. 361, 407, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989). “[W]here a trial judge’s decisions are tainted by even a mere suspicion of partiality, the effect on the public’s confidence in our judicial system can be debilitating.” *Sherman*, 128 Wn.2d at 205.

Recusal is appropriate not only where a judge has a direct or monetary interest in the proceeding, but where presiding over the case might offer “a possible temptation . . . . not to hold the balance nice, clear and true.” *Tumey v. Ohio*, 273 U.S. 519, 532, 47 S. Ct. 437, 71 L. Ed. 749 (1927). “[W]hen the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from view, and we must presume the process was impaired.” *Id.* at 535

A judge properly recuses herself where she had prosecuted the

defendant in a prior capacity. *United States v. Zerilli*, 328 F. Supp. 706 (C.D. Cal. 1971). A judge who was a U.S. Attorney during the investigation of the crime which was later prosecuted must recuse himself from trying the case in that cause. *United States v. Arnpriester*, 37 F.3d 466 (9<sup>th</sup> Cir. 1994). Disqualification is required in Washington where a judge has formerly been a lawyer in the case being adjudicated, even where the former case was unrelated. *State v. Dominguez*, 81 Wn. App. 325, 329, 914 P.2d 141 (1996); *State v. Eastabrook*, 58 Wn. App. 807, 817, 795 P.2d 151, *review denied*, 11 Wn.2d 1031 (1990). In other states, disqualification is required if the judge was involved in any prior adjudication against the defendant. *Mustafoski v. State*, 867 P.2d 824, 832 (Alaska Ct. App. 1996). And generally, if one attorney in a firm is disqualified, all of the attorneys in the firm are disqualified. *In re Disciplinary Proceedings Against Egger*, 152 Wn.2d 393, 98 P.3d 477 (2004); RPC 1.10.

Here, Mr. Gentry's capital case was prosecuted and his conviction and death sentence defended by the Kitsap County Prosecutor's Office where Judge Forbes spent much of her career—including years in which that office was actively prosecuting this case. Issues challenging the integrity of that Office were pending before this Court and in the DNA case itself. The appearance of fairness dictated recusal from this matter.

**3. THE TRIAL COURT ERRED IN HOLDING THAT ORDERS FOR DNA TESTING OF MULTIPLE ITEMS OF EVIDENCE UNDER RCW 10.73.170 ARE SUBJECT TO *DE NOVO* REVIEW AND RECONSIDERATION ON THE BASIS OF A SINGLE TEST RESULT.**

The State's motion to deny DNA testing argued that the tests previously ordered by the court should not be conducted because the defendant could not establish the basis for such testing under RCW 10.73.170. *See* CP 506-7. The State's motion made no attempt to argue that it met the standards for reconsideration of an order previously entered set by Kitsap County Local Civil Rule 59.<sup>11</sup>

The trial court granted the State's motion without giving any weight to the fact that the DNA testing had previously been ordered, or that critical items of evidence had not been tested because of the prosecution's failure to secure them. *See* CP 673-677. It did so on the basis of an unsworn laboratory report of the comparison of a partial DNA profile taken from stains on shoelaces with a DNA profile of the victim, Cassie Holden. *See id.*; CP 519-20. It paid no regard to the fact additional items had not been obtained and tested due to the State's inaction, or questions regarding the condition of the items tested raised by a defense forensic expert. CP 571-576. Nor did it consider any of the defendant's

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<sup>11</sup> Ironically, the Superior Court applied the strictures of KCLR 59 to the defendant's motion for recusal, even though the court had previously indicated it would consider a formal motion to recuse after denying the defendant's oral motion. CP 671; *see* RP (9/20/13) at 8-9.

arguments that, despite the inculpatory result in the first WSP laboratory testing, exculpatory results on the additional items that had been ordered to be tested would still have raised reasonable doubts about the defendant's guilt. The defendant argued:

The materials remaining to be tested include preparations made prior to Defendant's trial from the shoes and shoe laces seized in the search of Defendant's brother's house. ... If the results of this testing are different from those done on the stains already tested, it would confirm questions regarding the integrity of the stains previously tested and raise reasonable doubts about the significance of that evidence and the Defendant's involvement in this crime.

CP 577.

The materials left to be tested include a hair found on the victim's body which was the centerpiece of the prosecution's case against Mr. Gentry (and its race-based theory of the case) ... If that hair is tested and proves not to have come from the defendant or his brother, a centerpiece of the prosecution's case would be removed. Even if additional testing agreed with the findings of the testing done so far regarding the blood on the shoelaces from the defendant's brother's house, the conflict between these items of critical forensic evidence would create a reasonable doubt that would not otherwise exist.

CP 578. In effect, the trial court held that orders for DNA testing under RCW 10.73.170 are subject to *de novo* reconsideration in light of the results of each test as they occur. The statute provides no basis for such an extraordinary rule. To the contrary, such a rule would undercut the purpose of the statute, which is to "provide a remedy for those who were wrongly convicted despite receiving a fair trial," *State v. Riofta*, 166

Wn.2d 358, 369 n. 4, 209 P.3d 467 (2009), by making DNA orders subject to constant reconsideration and revision.

The trial court's acceptance of the State's argument that it should reconsider the need for testing *de novo* placed the burden on the defendant to prove once again that testing was called for under the standards of RCW 10.73.170. Its simultaneous ruling that the single unsworn lab report submitted by the state conclusively proved those standards could not be met denied the defendant a chance to show he could still meet that burden. By so ruling, the trial court misread the law and abused its discretion.

**4. THE TRIAL COURT ERRED IN TERMINATING  
DNA TESTING WHERE FURTHER TESTING  
COULD ESTABLISH INNOCENCE.**

The Kitsap County Court cut off DNA testing after only one of 56 items of evidence previously identified was tested. CP 486-493, 672-677. Although the test showed that the "partial DNA profile obtained from the left shoelace (25-9B) [of Mr. Gentry's shoes] matches the DNA profile of Cassie Holden (from item 2-8)," the prior report of Kay Sweeney cast some doubt on the integrity of the stain on the shoelace. CP 571-572. If that stain was a result of the mishandling of evidence, its match result would not be conclusive, as the court found it to be. Certainly it would not be conclusive if additional testing produced contrary results.

Materials remaining to be tested include preparations made prior to trial from the shoes and laces. CP 486-493. If the results of this testing are different from those done on the stains already tested, it would confirm defense questions regarding the integrity of the stains previously tested. These results, together with favorable results from further testing of hair evidence, would clearly meet the criteria of RCW 10.73.170(3) and establish a probability of innocence. This would clearly be so if the DNA results revealed a profile which pointed to someone else's guilt.

“DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty.” *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 129 S. Ct. 2308, 174 L. Ed. 2d 38 (2009). Testing for DNA has exonerated defendants even in cases where the evidence had seemed beyond dispute. *See, e.g.* Jonathan Salzman and Mac Deanier, “Man Freed in 1997 Shooting of Officer,” *BOSTON GLOBE*, Jan. 24, 2004. Indeed, out of the first 150 exonerations resulting from post-trial DNA testing, the courts in 50% of the cases had made statements regarding the defendant's likely guilt and in 10% explicitly found that the evidence of guilt was “overwhelming.” B. Garrett, *Judging Innocence*, 108 *COLUMBIA LAW. REV.* 55, 107 (2008).

Another well-known example includes proof that DNA results of hair comparison relied on by the prosecution in a Texas case that resulted in the execution of a man named Claude Jones, in 2000, was wrong. *See* D. Mann, “DNA Tests Undermine Evidence in Texas Execution,” *The Texas Observer* November 11, 2010, CP 378-80. Mr. Jones’ “conviction was based on a single piece of forensic evidence recovered from the crime scene – a strand of hair – that prosecutors claimed belonged to Jones.” *Id.* at 2.

[Appropriate DNA] technology didn’t exist when Jones was convicted in 1990. But the DNA test had been developed by 2000, when Jones’ execution date was nearing. He requested a stay of execution from two Texas courts and from the governor’s office in order to test the hair evidence and prove his innocence. His requests were all denied.

*Id.* at 2. Nine years after Jones was executed, DNA tests on the hair were ordered--over the prosecution’s objection—and the tests proved that the hair did not come from Jones. *Id.* at 1.

Recognizing the potential for such injustices and the availability of new methods to cure it, the Washington State Legislature enacted RCW 10.73.170 as a vehicle for allowing persons to be exonerated through post-conviction DNA testing, and amended it in 2005 to make clear that if DNA testing “would provide significant new information” that is material to the identity of the person committing the crime, such testing should be

ordered. *State v. Riofta*, 166 Wn.2d 358, 209 P.3d 467 (2009). Significant new information includes “DNA evidence that the original fact finder did not consider.” *Riofta*, 166 Wn.2d at 366.

Similarly, where the defendant can demonstrate that DNA testing has advanced since the time of trial, the requirements of RCW 10.73.170(2) are met and testing must be ordered. *State v. Gray*, 151 Wn. App. 762, 215 P.3d 961 (2006).

Where “exculpatory [DNA] results would, in combination with other evidence, raise a reasonable probability the petitioner was not the perpetrator,” the motion for DNA testing should be granted. *Riofta* at 368; *Gray*, 151 Wn. App. at 775; *State v. Thompson*, 155 Wn. App. 294, 296, 229 P.3d 901 (2010) (reversing denial of a motion for DNA testing where a finding that the defendant’s DNA was not present in the semen sample would provide strong evidence of his innocence of the rape charge).

The untested evidence still holds much the same potential for exoneration that it did at the time DNA was ordered in 2011, when the state conceded that it met the criteria were met. Exculpatory results from testing of the original extracts from the laces, still in FSA’s possession—that is, results that contradict the single WSP finding—would squarely raise the questions about the integrity of the evidence on the laces that are suggested by the KMS Forensics Report. Even if the results from the

testing of the laces was confirmed, exculpatory results from testing of the “Negroid” and other hairs taken from Cassie’s body—results which excluded either of the Gentry brothers or included another suspect—would raise substantial doubts that did not previously exist about the apparent contradiction, and other possible explanations for the blood on the laces. These could include the possibility that Mr. Gentry was in the area sometime after the murder, as the identification witnesses said, and got traces of blood on the shoes from walking on the trail, along which the vegetation was saturated with Cassie’s blood (see RP(5/17/91) 291-303; RP(5/20/91) 9-17), or that there had been tampering with the evidence, *cf. Cooper v. Woodford*, 358 F.3d 1117, 1124 (9th Cir. 2004) (ordering testing for preservatives to determine if blood evidence was planted), *Cooper v. Brown*, 565 F.3d 581 (9th Cir. 2009) (dissent from affirmance following allegedly flawed testing). Even if it was right to reconsider the DNA Testing Order *de novo*, the trial court erred in failing to follow the statutory standard, which focuses not on the likelihood of exculpatory results from testing, but the significance of such results if they are obtained. *Thompson*, 155 Wn. App. at 296.

For all these reasons, the trial court erred in granting the state’s Motion to Deny Further Postconviction DNA testing; it was both improper and premature to do so.

**E. CONCLUSION**

The orders of the Kitsap County Court denying recusal and granting the denial of further DNA testing should be reversed and the case remanded for testing of the items previously ordered to be tested, including the evidence in possession of FSA and Ed Blake that was the subject of testimony at trial.

DATED this 11<sup>th</sup> day of April, 2014.

Respectfully submitted,

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Timothy K. Ford, WSBA #5986

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 11<sup>th</sup> day of April, 2014, I caused a true and correct copy of the Opening Brief of Appellant to be served on the following via e-mail and first class mail to:

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/s/ Linda M. Thiel  
Linda M. Thiel, Legal Assistant

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Tim Ford; GRIFF1984; RSutton@co.kitsap.wa.us  
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Rec'd 4-14-14

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**Subject:** State v. Gentry, No. 89620-8

Attached is the Opening Brief of Appellant in this case. Thank you.

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