72850-4

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Court of Appeals
Division I
State of Washington

72850-4

No. 72850-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRIAN DUBLIN,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

"Many innocent individuals have been exonerated through postconviction DNA tests, including some who had overwhelming evidence indicating guilt." State v. Crumpton, 181 Wn.d 252, 261-62, 332 P.3d 448 (2014). Police investigated three in-home sexual assaults on Vashon Island spanning from 2003 to 2010. In 2003, a man raped a young woman; in 2006, a man tried to rape a young girl; and in 2010 a man raped a young woman. DNA evidence from sexual assault kits collected in the 2003 and 2010 cases linked Mr. Dublin to these two rapes and the State theorized he was also responsible in the 2006 case. The State, however, did not test other physical evidence obtained in the 2003 case for DNA, which included the bedsheets and underwear that the perpetrator left in the bedroom. Prosecuted in 2011, Mr. Dublin claimed innocence, testifying that he had consensual sex with the two women in his truck. After being found guilty, Mr. Dublin sought postconviction DNA testing of the items collected from the bedroom in the 2003 case, but the trial court denied his motion. Because the testing of these items, assuming a favorable result, would demonstrate Mr. Dublin's innocence in the 2003 case on a more probable than not basis, this Court should reverse.

B. ASSIGNMENT OF ERROR

The trial court erred in denying Mr. Dublin's postconviction motion for DNA testing.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

In deciding whether to grant or deny a postconviction motion for DNA testing, a court analyzes whether the testing would establish that the movant is, on a more probable than not basis, innocent. This analysis considers all the evidence from trial and assumes that DNA test results would be exculpatory. Mr. Dublin's DNA was found in samples taken from the rape victim's person in 2003. However, items from the victim's bedroom, including underwear worn by the perpetrator and the bed sheets, were not tested. Mr. Dublin claimed to have consensual sex with the woman outside her home in his truck and no other physical evidence placed Mr. Dublin inside the woman's home. The victim did not identify Mr. Dublin as her assailant. Would exculpatory DNA test results from the untested items show that Mr. Dublin is more probably than not innocent of the 2003 rape and burglary?

D. STATEMENT OF THE CASE

According to the testimony from trial in 2011, Vashon Island, Washington is a small, rural community of about ten to eleven thousand.[1] RP 379, 1104. It is common for people to leave their doors unlocked. RP 383.

A.B. testified that on October 8, 2003,[2] when she was 18 years old, she awoke in her bed around 3 a.m. and saw man in her room. RP 572, 576, 579-80. The man, who had a "plump" build, was wearing some kind of mask, and possibly had a knife, told A.B. to be quiet and threatened her. RP 312, 370, 580, 583, 586. The man had an older sounding voice. CP 68. He had sex with A.B and left. RP 586-88. A.B. then woke up her step-father, who was the only other person in the home at the time, and called 911. RP 592.

A.B. was taken to Harborview hospital in Seattle. RP 302. A.B said she was unsure if her assailant had ejaculated. RP 523. She stated that she had last had consensual sex a couple of months before. RP 639. Medical personal collected oral, anal, vaginal, perineal, and skin swabs from A.B. RP 475, 599, 839. A forensic scientist found sperm on the

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[1] Some of the facts in this case are recounted in this Court's unpublished opinion rejecting Mr. Dublin's appeal. State v. Dublin, noted at 175 Wn. App. 1013 (2013).

[2] This Court's opinion incorrectly states this date as October 18, 2003.

vaginal swabs and anal swabs. RP 844, 847. The DNA profiles from both sperm samples were the same. RP 846-48. Analyzing a swab from A.B.'s neck, she found a mixture with DNA from two people, a major and a minor profile. RP 850-51. The scientist assumed the minor profile was A.B.'s and determined the major profile matched the unknown male profile from the sperm samples. RP 851-52. Analyzing a swab from A.B.'s breast, the scientist found the same male profile. RP 852-53.

Police collected evidence from A.B.'s bedroom. RP 409-14; CP 64, 66. Police seized a pair of grey underwear that A.B. said belonged to the assailant, which was left on A.B.'s snowboard. RP 414, 416; CP 64, 66. Police also seized pillow cases from the bed, a bed sheet, a pair of scissors (which the suspect might have used as a weapon), and a very large stuffed panda bear that A.B. said the assailant had his head on. RP 410-11, 413; CP 64, 66.

The male profile obtained from the sexual assault kit did not provide a hit in the DNA database. RP 854. The evidence from A.B.'s bedroom was not tested. The case went cold. RP 341.

In the early morning hours of July 2, 2006, police received a 911 call about a male intruder and attempted sexual assault at a Vashon home. G.G., a 12-year-old girl, had been awoken by a tall, pale man. RP 1053, 1267, 1307, 1326. The man did not have a hat, mask, or gloves. RP 1056-

57. He did not have facial hair. RP 1321. The man smelled like cigarette smoke. RP 1048-49. The man threatened G.G. and took her to another room. RP 1316-18. G.G. was able to run away from the man and woke up her parents. RP 1053, 1326. The case went cold. RP 1122.

Around 2:30 a.m., on January 11, 2010, E.P., a 16-year-old girl, returned home to her parents' house after a night of partying, heavy drinking, and drug use. RP 1454-55, 1466-67, 1617, 1636. She awoke around 3:30 a.m. to find a man on top of her. RP 1466-67, 1639. She thought it might be her boyfriend, whom her parents allowed to freely come and go as he pleased at any hour, but determined it was not him because the man had facial hair and her boyfriend was clean shaven. RP 1639, 1717. The man had a blue pullover sweatshirt. RP 1642-43. The man threatened her and then had sex with her. RP 1640-41. E.P. did not know if the man used a condom or not. RP 1641. After the man left, E.P. woke her parents. RP 1643. They called 911. CP 72. E.P. was taken to Harborview Hospital, where staff collected samples from her for a sexual assault kit. RP 1443, 1445, 1487.

E.P. said she did not know who the man was and did not indicate that she might know who he was. RP 1478-79, 1641. Police, however, asked her whether she knew anyone that matched the description. RP 1644. In response, she named Brian Dublin as her "best guess" because

she had briefly seen Mr. Dublin at the party she attended earlier that night, and he had facial hair and was wearing a blue pullover sweatshirt. RP 1644-45.

E.P. knew Mr. Dublin. She saw Mr. Dublin at parties and her friend babysat Mr. Dublin's son. RP 1623. She had attended a party at Mr. Dublin's house during the summer of 2009. RP 1624. There, she played drinking games with Mr. Dublin and Mr. Dublin's roommate, Miles Essery. RP 1625-27, 1903. This was a "typical island party." RP 1624, 1650. E.P. invited two of her friends, Kristyn Hoffman and Anastasia Anderson, to join the party and drinking game. RP 1866-67, 2091. When they arrived, they saw that E.P. appeared intoxicated and did not have all her clothes on. RP 1867, 1906, 2092-93. They told E.P. to put her clothes on, but E.P. declined. RP 1868, 2092. After about an hour, the two friends left. RP 1870. Before leaving, they offered E.P. a ride home, but she declined, explaining she was having a good time. RP 1650, 1868, 1905-06, 2096. Mr. Dublin testified he had consensual sex with E.P. that night. RP 2125. E.P. remembered drinking, being in Mr. Dublin's bed upstairs, waking up downstairs in Mr. Essery's bed in the morning, and being driven home by Mr. Essery. RP 1628. Afterwards, E.P. and Mr. Dublin exchanged text messages. RP 1631-33. She also got rides from Mr. Dublin. RP 1653.

Police began investigating Mr. Dublin. Mr. Dublin was 5'9," about 140 pounds, with dark brown hair. RP 2143-44. During summer, including 2006, he was tan because most of the work he did was outside. RP 2137-38.

After recovering Mr. Dublin's DNA, his DNA profile matched the DNA profile from a sperm fracture recovered from E.P.'s person. RP 711, 1085. This profile also matched the unknown profile from A.B.'s case. RP 699, 856-57. Mr. Dublin denied breaking into A.B.'s and E.P's homes and raping them. RP 2139-2140.

Concerning E.P., Mr. Dublin briefly attended the same party E.P. attended the night before on January 10, 2010. RP 804, 1210, 1578, 2127. At that party, Mr. Dublin testified that he had consensual sex with E.P. in his truck. RP 2128. Cassie Bosworth, who was E.P.'s close friend and was also at the party, testified that she saw E.P. in a truck that evening, but did not know whose truck it was. RP 910, 1618-19. E.P. denied having a sexual relationship with Mr. Dublin. RP 1659.

Concerning A.B., Mr. Dublin testified that he knew A.B, spent time with her, and had consensual sex. RP 2113, 2115-16. He recalled having sex with her in his truck after a party, but could not remember the exact date. RP 2115. Amy McFalls testified that she had seen A.B. and Mr. Dublin together more than once, including after a party in 2003. RP

1787-89. A.B. claimed to not know Mr. Dublin or to have spent time with him. RP 602. This was despite A.B. being close in age to Mr. Dublin, having attended the same high school as Mr. Dublin at the same time, and admitting that she knew Mr. Dublin's sister and the mother of Mr. Dublin's child. RP 573, 598, 600-02, 2112, 2117.

Police collected four useable prints from A.B.'s room in 2003 and four useable prints in E.P.'s case. RP 1939-42, 1947. All these prints excluded Mr. Dublin. RP 1942, 1947.

Although Mr. Dublin did not fit G.G.'s description of a tall, pale man, police suspected he was responsible. Mr. Dublin had been friends with G.G.'s older sister, who was ten years older than G.G. RP 1368-69. While they were in high school, they spent time together and attended parties. RP 1369, 1372-74. The older sister thought Mr. Dublin liked her and thought he was sweet. RP 1370, 1382. She ended their friendship, however, after she discovered Mr. Dublin had a girlfriend. RP 1382. Mr. Dublin respected her decision and ceased contact. RP 1383. Mr. Dublin had been in the house once when he got into a car accident nearby and used the phone inside. RP 1384, 2134-35.

G.G. attended a lineup in December 2010. RP 1511-12. G.G. was unable to make an identification, but selected Mr. Dublin and another man

as the best possible matches. RP 1335-36, 1352-53, 1355, 1525. Mr. Dublin denied he was the perpetrator. RP 2136.

During their investigation, police recovered a notebook in a room that Mr. Dublin had lived in. RP 2166-67. The room was previously occupied by Mr. Dublin's sister. RP 2166-67. The notebook was filled with writing. RP 1146. On a couple of pages, there was a list inside with A.B.'s name on the top, the initials G.G. eight lines down, and E.P.'s name four lines down on the next page. RP 1146-47, 2034-36. Mr. Dublin denied ownership of the notebook. RP 2140.

At trial in 2011, Mr. Dublin was convicted of first degree rape of A.B., first degree rape of E.P., attempted first degree rape of G.G., and three related counts of first degree burglary. CP 23-26. The jury acquitted Mr. Dublin of attempted indecent liberties and fourth degree assault of Ms. Bosworth for purportedly trying to have sex with her while Ms. Bosworth was intoxicated. RP 871; CP 22, 27, 34. Mr. Dublin's appeal was denied in 2013. State v. Dublin, noted at 175 Wn. App. 1013 (2013).

In October 2014, Mr. Dublin moved for DNA testing of the items gathered from A.B.'s bedroom (underwear, bedding, large stuffed animal, and scissors). CP 49-87. The same judge that presided over Mr. Dublin's trial decided Mr. Dublin's motion, without oral argument, on November 17, 2014. CP 88-89. The court noted that the State had not responded so

the court assumed there was no objection to DNA testing. CP 88-89. Nevertheless, the court denied Mr. Dublin's request, ruling that Mr. Dublin "has not shown the likelihood that the DNA evidence would demonstrate the defendant's innocence on a more probable than not basis." CP 88-89. The State filed a belated response on November 21, 2014, opposing DNA testing. CP 95-106. Mr. Dublin appeals.

E. ARGUMENT

Favorable DNA evidence from the untested items recovered from A.B.'s bedroom would demonstrate Mr. Dublin's innocence on a more probable than not basis. The court erred in denying Mr. Dublin's motion for postconviction DNA testing.

1. In evaluating whether DNA testing would show innocence more probably than not, the court must assume that the results would be favorable to the convicted person.

Washington's postconviction DNA statute allows a convicted person to move for DNA testing of evidence. RCW 10.73.170. The court must grant the motion if the procedural requirements are satisfied and the movant "has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis":

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

> (2) The motion shall:
>
> (a) State that:
>
> (i) The court ruled that DNA testing did not meet acceptable scientific standards; or
>
> (ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or
>
> (iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;
>
> (b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and
>
> (c) Comply with all other procedural requirements established by court rule.
>
> (3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

RCW 10.73.170. Review of a trial court's decision on a motion for postconviction DNA testing is for abuse of discretion. State v. Thompson, 173 Wn.2d 865, 870, 271 P.3d 204 (2012).

At issue in this case is the substantive requirement of the statute, RCW 13.73.170(3).[3] This substantive portion presumes that the test result

[3] The procedural component is RCW 13.73.170(2). State v. Riofta, 166 Wn.2d 358, 364, 209 P.3d 467 (2009). The trial court rejected the motion on the

would be favorable to the convicted person. State v. Crumpton, 181 Wn.2d 252, 260, 332 P.3d 448 (2014). "A court should look to whether, considering all the evidence from trial and assuming an exculpatory DNA test result, it is likely the individual is innocent on a more probable than not basis." Id. Inculpatory evidence not presented at trial is not considered. Thompson, 173 Wn.2d at 873-74.

In conducting this inquiry, courts must be mindful that "there will always be strong evidence against a convicted individual since they were convicted of the crime beyond a reasonable doubt." Crumpton, 181 Wn.2d at 262. Courts "should not focus on the weight or sufficiency of evidence presented at trial to decide a motion for postconviction DNA testing." Id. Rather, courts "must focus on the likelihood that DNA evidence could demonstrate the individual's innocence in spite of the multitude of other evidence against them." Id.

2. Precedent supports testing in this case.

Appellate decisions in postconviction DNA cases have generally been favorable to the convicted person, not the State. For example, in Crumpton, the Court overruled the two-member majority Court of Appeals' opinion affirming denial of DNA testing. Crumpton, 181 Wn.2d

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substantive portion. CP 88. In its memorandum opposing testing, the State argued only that the substantive component was not met. CP 91.

at 264. There, in the underlying case, a man entered an elderly woman's home during early morning hours and raped her. Id. at 255. About two hours later, police stopped the defendant, who was about half a mile from the woman's home, because he matched the description of the perpetrator. Id. at 256. The defendant had items from the woman's home. Id. A hair from the woman's mattress "matched" a pubic hair sample from the defendant. Id. The defendant eventually admitted to burglarizing the woman's home, but denied raping her. Id. at 256-57. Convicted, the defendant moved to test rectal and vaginal swabs, bedding, white handkerchiefs from the crime scene, and hairs. Id. at 257. The trial court denied the motion, but our Supreme Court reversed:

> Any DNA evidence left on the items Crumpton petitioned to test would almost certainly have been left by the perpetrator of the rape. Exculpatory results of DNA testing in this case would directly affect the likelihood Crumpton was innocent.

Id. at 261.

Thompson, also a Supreme Court case, is similar. There, a woman was brutally raped in the defendant's hotel room across the street from a bar she had frequented earlier that night. Thompson, 173 Wn.2d at 867-68. Police saw the defendant pushing the woman out of his hotel room and also found blood in the room. Id. at 868. Still, the woman's description of her assailant did not match the defendant. Id. at 868-69.

Vaginal swabs containing semen were collected from the woman. Id. at 869. Postconviction, the convicted man sought to test this evidence, but was denied. Id. at 870. The Court of Appeals reversed and the Supreme Court affirmed the reversal. Id. at 897. The court reasoned:

> If DNA test results should conclusively exclude Thompson as the source of the collected semen, it is more probable than not that his innocence would be established, particularly in light of the weakness of the victim's identification of Thompson as her attacker.

Id. at 875.

Likewise, in Gray, the Court of Appeals reversed a denial of a motion for DNA testing. There, a man raped a teenage girl, C.S., who was camping with three other teenagers, two boys and girl. State v. Gray, 151 Wn. App. 762, 766, 215 P.3d 961 (2009). The man forcibly held the other girl, R.J., at knifepoint and threatened to kill her if the two boys did not lie down, which they did. Id. After the man fled, police stopped the defendant in the area, who matched the description. Id. Among other items, police collected clothing from the girls; hairs from the scene, the victims, and the defendant; and rectal and vaginal swabs from C.S. Id. at 767. The defendant moved to test these items. Id. The court denied his request. Id.

This Court reversed, reasoning that favorable test results would show Mr. Gray's innocence on a more probable than not basis:

> the assailant had intimate contact with one victim while holding the other victim at knife point. The presence of the same DNA profile on either the vaginal or anal swabs taken from C.S. and on any of the samples from R.J. would support a strong inference that the donor was the assailant. If that DNA profile does not match Gray's, it would be probative of his innocence on a more probable than not basis.

Id. at 775.

In so holding, the Gray Court analogized to Bradford, a case involving a motion for a new trial. Id. at 775. There, DNA from a mask placed on the victim by the assailant was neither the convicted person's nor the victim's. In re Pers. Restraint Petition of Bradford, 140 Wn. App. 124, 128, 165 P.3d 31 (2007). Tape, likely placed by the perpetrator, had been placed on the mask to cover the eyeholes. Id. at 131. The perpetrator also kept pushing the mask over the victim's eyes. Id. at 132. Accordingly, this Court was satisfied that it was reasonable to infer from this evidence that the convicted person was not the perpetrator. Id. at 132.

The main outlier is Riofta. There, a man, wearing a white hat, got out of a vehicle. State v. Riofta, 166 Wn.2d 358, 362, 209 P.3d 467 (2009). Two other men remained in the vehicle. Id. The man wearing the white hat shot at the victim, but missed. Id. He fled, leaving the white hat at the scene. Id. The hat actually belonged to the owner of the vehicle, which had been stolen. Id. at 363. The man convicted of the shooting

sought testing of the hat for DNA. Id. Our Supreme Court affirmed the denial of testing, reasoning that "[n]either the absence of Riofta's DNA nor the presence of another's DNA on the white hat would raise a reasonable probability of his innocence." Id. The hat could have been worn by other people besides the shooter and, unlike Bradford, it was not probable that the perpetrator necessarily left DNA on the object. Id. at 370-71. Additionally, there was strong eyewitness testimony and evidence showing the convicted person had a motive for the shooting. Id. at 373.

A more recent outlier is our Supreme Court's opinion in Gentry. There, the defendant was convicted of murdering a 12-year-old girl near a golf course and sentenced to death. State v. Gentry, No. 89620-8, slip op. 1, 3 (August 20, 2015). In 2011, the convicted man moved for DNA testing of many items, including hairs found on the victim and blood found on the convicted person's shoes and shoelaces. Id. at 4-5. The trial court granted the motion to test about 58 items. Id. at 5. Testing of the shoelaces revealed a DNA profile matching the victim's. Id. at 6. Before the other items were tested, the State moved to cease testing, arguing that given this result, further testing would not show innocence. Id. The trial court granted the request. Id.

The Supreme Court affirmed. Id. at 20. The court reasoned that it was unlikely that the hairs would show actual innocence because evidence at trial showed that many other sources could have deposited the hairs. Id. at 19. As for the blood on the shoe, the court stated that while this was a close question, reasonable jurists could disagree. Id. at 19-20. Accordingly, there was no abuse of discretion. Id. at 20.

3. The trial court erred in denying testing of the underwear, bedding, stuffed animal, and scissors from the bedroom because favorable DNA test results would establish Mr. Dublin's innocence on a more probable than not basis.

Consistent with this caselaw and the standard assuming a favorable result from DNA testing, Mr. Dublin establishes that DNA evidence would prove his innocence on a more probable than not basis.

Here, the underwear left by the perpetrator is like the mask in Bradford because it is the type of item one would expect a person to leave his DNA on. The lack of Mr. Dublin's DNA and the presence of another man's DNA on the underwear would support a strong inference that Mr. Dublin had not been in A.B.'s bedroom.

Concerning the bedding and large stuffed animal, the perpetrator touched these items and he may have also left semen on the bedding. The perpetrator may have also held the scissors as a weapon. Like the clothing in Gray, the lack of the convicted person's DNA and the presence of

another man's DNA on these items would tend to establish innocence more probably than not. A.B. reported she was sexually inactive for around two months previously. RP 639. There was no evidence that another man had been in A.B.'s bed. Thus, the presence of another man's DNA on these untested items would tend to show Mr. Dublin was not in the bedroom.

These favorable results would be especially probative because, excluding the DNA found on A.B.'s person, there was no physical evidence linking Mr. Dublin to A.B.'s room. It would tend to corroborate Mr. Dublin's claim that he was not in A.B.'s room and that he had consensual sex with A.B. in his truck. It would show that he was not guilty of burglarizing A.B.'s home or raping her.

As for the convictions related to E.P. and G.G., Mr. Dublin need only show that the evidence demonstrates his innocence more probably than not as to any conviction. See RCW 10.73.170(3) (requiring that evidence "would demonstrate innocence," not innocence of every conviction). Regardless, the evidence in G.G.'s case was not strong and there was evidence supporting Mr. Dublin's claim that he had consensual sex with E.P. in his truck during the party that preceded the sexual assault.

In its opposition to testing below, the State argued this case is similar to Riofta. CP 94-95. This case is unlike Riofta. Unlike the white

hat, it is unlikely that multiple people wore the perpetrator's underwear. Also unlike the hat, which did not belong to the shooter and may have been worn for only a short period of time, the underwear was likely worn by the perpetrator for a significant period of time. There are also many untested items. There was not strong eyewitness identification as there was in Riofta. Similar to Thompson, Mr. Dublin did not fit A.B.'s description of her assailant. He was not "plump," and he was young, not old. RP 312 (describing assailant as having a plump build); CP 68 (describing assailant as being older than Mr. Dublin and having an older sounding voice).

Gentry is also dissimilar. There, DNA evidence confirmed that the victim's blood was on the defendant's shoelace. This, along with the other evidence from trial, linked the convicted person to the victim and the scene of the crime. Here, while there was evidence linking Mr. Dublin to A.B., there was no strong evidence linking Mr. Dublin to A.B.'s room. Moreover, Mr. Dublin claimed to have had consensual sex with A.B. in his truck, which would explain the presence of his DNA on her. There was no such evidence in Gentry which would explain why the victim's blood was on the convicted person's shoelace.

Finally, similar to Crumpton, that there is significant inculpatory evidence against Mr. Dublin does not mean he is not entitled to testing.

See Crumpton, 181 Wn.2d at 262 ("we recognize that in light of the overwhelming physical and circumstantial evidence against Crumpton some might find it difficult to grant him this postconviction DNA testing."). While evidence from trial is considered, analysis of RCW 10.73.170(3) is not a retrial of the underlying case. Id. at 263. Thus, while the presence of Mr. Dublin's DNA on A.B.'s person was strong evidence against him, this does not mean that favorable test results from the items in A.B.'s room would not demonstrate his innocence of the burglary and rape on a more probable than not basis. See id. at 262 (holding testing was required despite strong evidence of guilt).

F. CONCLUSION

Because favorable DNA results from the untested items in A.B.'s bedroom would demonstrate Mr. Dublin's innocence more probably than not, this Court should reverse the denial of his motion for DNA testing.

DATED this 21st day of August, 2015.

Respectfully submitted,

/s/ Richard W. Lechich_____
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. BRIAN DUBLIN, Appellant.	)))))))))	NO. 72850-4-I

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 21ST DAY OF AUGUST, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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