No. 952728

COA No. 33299-3-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, PETITIONER

v.

JESUS DUARTE VELA, RESPONDENT

ON APPEAL FROM THE SUPERIOR COURT

OF OKANOGAN COUNTY

RESPONDENT'S REPLY TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

Jesus Duarte Vela asks this court to deny the State's petition for review of the decision of Division Three of the Court of Appeals.

B. COURT OF APPEALS DECISION

The opinion was filed on September 5, 2017, and modified by an Order Denying Motion for Reconsideration and Amending Opinion, filed on October 31, 2017.

C. ISSUE PRESENTED FOR REVIEW

Does the Court of Appeals decision create a new standard for trial court evidentiary rulings inconsistent with prior published Washington appellate court decisions?

D. STATEMENT OF THE CASE

Jesus Duarte Vela shot Antonio Menchaca and was charged with first degree murder. (RP 322; CP 206-09) He claimed he acted in self defense and sought to present testimony of his brother Alphonso to the effect that two or three years earlier Mr. Menchaca had made a telephone call from prison threatening to kill Mr. Duarte Vela's family. (1/20 RP 19, 24, 28; 1/27 RP 10) The trial court excluded the proposed testimony

absent evidence Mr. Menchaca had acted on the threat promptly after being released from prison. (1/27 RP 10-13)

The court also precluded testimony from Mr. Duarte Vela as to his reasons for fearing Mr. Menchaca, the reasons for his actions leading up to the shooting, and the nature of the bodily harm he feared immediately prior to the shooting. (RP 617-19) Mr. Duarte Vela has appealed from his ensuing conviction. (CP 1)

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

Review should be granted when a decision of the Court of Appeals conflicts with a decision of the Supreme Court or another division of the Court of Appeals, or involves a significant question of constitutional law or an issue of substantial public interest. RAP 13.4(b). The decision in the present case is consistent with relevant appellate decisions, in particular this court's opinion, as to the standard of review of trial court rulings denying admission of evidence relevant to the appellant's defense, under the Sixth Amendment.

The right to present testimony in one's defense is guaranteed by both the United States and the Washington Constitutions. U.S. Const. amend. VI; Wash. Const. art. 1, § 22.

The Court of Appeals held that the trial court violated Mr. Duarte

Vela's Sixth Amendment right to present a defense by preventing a defense witnesses from testifying that he had told the defendant about Mr. Menchaca's express threat and by precluding Mr. Duarte Vela from testifying that he feared Mr. Menchaca would cause him great bodily harm or death.[1] *State v. Duarte Vela*, 200 Wn. App. 306, 402 P.3d 281 (2017), *as amended on denial of reconsideration* (Oct. 31, 2017).

The State contends the Court of Appeals decision conflicts with this Court's decision in *State v. Jones*, 168 Wn.2d 713, 230 P.3d 576 (2010), and, by extension, with decisions of this Court and the lower courts that have traditionally applied the "abuse of discretion" standard of review to evidentiary rulings. The State asserts:

> Division Three's decision in *Duarte Vela* is based on an interpretation and application of *State v. Jones,* 168 Wn.2d 713, 230 P.3d 576 (2010) that *requires* a trial judge to admit evidence offered by a defendant if it is remotely probative of his defense, regardless of whether the trial court finds a legitimate, legal basis to exclude the evidence. The decision suggests that, following *Jones,* if the evidence *could* be admissible, it *must* be admitted. This suggests a new, heightened standard for trial courts to use in ruling on defense offered evidence that did not exist prior to *Jones* and the idea that a trial judge has little to no

[1] In addition to offering testimony about Mr. Menchaca's threat, Mr. Duarte Vela sought to provide evidence regarding acts of violence involving Mr. Duarte Vela's family. The court of appeals declined to find that exclusion of this evidence was error in the absence of evidence that the alleged domestic violence was related to Mr. Duarte Vela's expressed fear of Mr. Menchaca. *Duarte Vela*, 200 Wn. App. at 20.

> discretion in excluding defense offered evidence which is otherwise excludible under the rules of evidence.

(Respondent's Brief at 4-5)

The Court of Appeals analysis begins with recognition of the "abuse of discretion" and its modification in the context of a Sixth Amendment challenge, citing *State v. Jones*:

> We review a claim of a denial of Sixth Amendment rights de novo. *State v. Jones,* 168 Wash.2d 713, 719, 230 P.3d 576 (2010). We continue to review most trial court evidentiary rulings for an abuse of discretion. But when a trial court's discretionary ruling excludes relevant evidence, the more the exclusion of that evidence prejudices an articulated defense theory, the more likely we will find that the trial court abused its discretion. *Id*. at 720, 230 P.3d 576.

Duarte Vela, 200 Wn. App. at 317.

Jones held that the defendant's constitutional right to present a defense includes the right to present relevant evidence; the State bears the burden of showing relevant evidence is so prejudicial as to disrupt the fairness of the trial; and the evidence may not be excluded unless the State's interest in excluding prejudicial evidence outweighs the defendant's need to present the evidence. *Jones*, 168 Wn.2d at 720; see Respondent's Brief at n. 3.

This analysis does not, as Petitioner suggests, create a new standard for determining the admissibility of relevant evidence proffered

by a defendant. *Jones* noted that "for evidence of *high* probative value 'it appears no state interest can be compelling enough to preclude its introduction consistent with the Sixth Amendment and Const. art. 1, § 22.' " *Id.* (quoting *State v. Hudlow*, 99 Wn.2d 1, 16, 659 P.2d 514 (1983)).

The Court of Appeals decision in the present case directly applies the components of the analysis established in *Jones*. First, the court found that because "[e]vidence of a victim's propensity toward violence that is known by the defendant is relevant to a claim of self-defense," evidence relating to "Menchaca's threat to kill Duarte Vela's family was highly probative of his defense." *Duarte Vela*, 200 Wn. App. at 319 (citing *State v. Allery*, 101 Wn.2d 591, 594-95, 682 P.2d 312 (1984), and *State v. Cloud*, 7 Wn. App. 211, 218, 498 P.2d 907 (1972)).

The court then weighed the probative value of the evidence against the State's contention that it was arguably "weak" or "false" and concluded that, while the quality of the evidence presented a question for the jury, in the context of a Sixth Amendment challenge the probative vale outweighed the potential prejudice. *Duarte Vela*, 200 Wn. App. at 320-21 (citing *Jones*, 168 Wn.2d at 720-21).

The Court of Appeals analysis is consistent with the Jones analysis and prescribed standard of review governing review of evidentiary rulings in light of the defendant's Sixth Amendment right to present a defense.

Petitioner's argument that the Court of Appeals misconstrues or misapplies this court's decision in *Jones* is without merit.

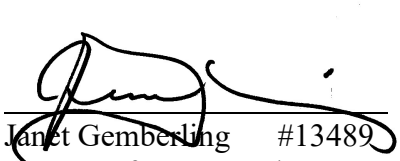
Petitioner argues at some length that the Court of Appeals decision in this case is inconsistent with this Court's decision in *State v. Perez-Valdez*, 172 Wn.2d 808, 265 P.3d 853 (2011), and various other cases that have addressed the "abuse of discretion" standard of review of rulings on the admissibility of evidence. Any inconsistencies arise from the fact that those cases do not address review of evidentiary rulings in light of the Sixth Amendment right to present a defense.

F. CONCLUSION

The Court of Appeals properly relied on and applied the rule set forth by this court in *State v. Jones.* Review should be denied and the Court of Appeals decision should be affirmed.

Dated this 28th day of December, 2017.

Respectfully submitted,



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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Petitioner,	)	No. 952728
	)	
vs.	)	
	)	CERTIFICATE
JESUS DUARTE VELA,	)	OF MAILING
	)	
Respondent.	)	

I certify under penalty of perjury under the laws of the State of Washington that on December 28, 2017, I sent copies of the Answer to Petition for Review in this matter by email on the attorney for the Petitioner, receipt confirmed, pursuant to the parties' agreement:

Branden E. Platter
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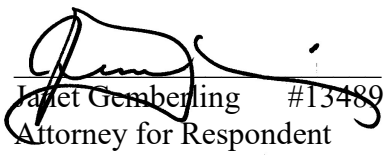
sfield@co.okanogan.wa.us

I certify under penalty of perjury under the laws of the State of Washington that on December 28, 2017, I sent a copy of the Answer to Petition for Review in this matter by pre-paid first class mail addressed to:

Jesus Duarte Vela
#380458
Coyote Ridge Correction Ctr
PO Box 769
Connell, WA 99326

Signed at Spokane, Washington on December 28, 2017.

Janet Gemberling, P.S.



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