

FILED
Court of Appeals
Division II
State of Washington
2/7/2018 1:35 PM

NO. 50262-3

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

IN RE THE PERSONAL RESTRAINT PETITION OF:

MARTIN A. JONES,

Petitioner.

STATE'S ANSWER TO BRIEF OF AMICUS CURIAE

ROBERT W. FERGUSON
Attorney General

Melanie Tratnik, WSBA #25576
John Hillman, WSBA #25071
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104
(206) 464-6430
OID #91093

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF RELEVANT FACTS.....	2
III.	ARGUMENT	5
	A. Amici Provide No New Facts, Evidence or Argument To Support Their Claim That Bunter Mark Analysis Is Not a Valid Science Properly Subject To Testimony by a Qualified Expert.....	5
	1. The relevant scientific community and the courts recognize that the analysis of bunter mark evidence is a generally accepted forensic science that is admissible in state and federal courts.....	5
	2. The Court of Appeals already held that the trial court properly admitted testimony by a qualified expert regarding the bunter mark evidence and amici present nothing new to allow those rulings to be reconsidered.....	6
	B. The Jury Was Fully Informed of All Relevant Aspects of the Bunter Mark Evidence and Amici Provide No Evidence To Support Their Speculative Claim That the Jury Overweighed the Evidence	9
	1. The forensic scientist was not biased	9
	2. Jurors are presumed to follow the law and there is no evidence that the jury in this case did not scrupulously follow the court's instructions to carefully weigh Schoeman's testimony.....	13
	C. Any Error Was Harmless Error.....	17
IV.	CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Frye v. United States</i> , 54 App. D.C. 46, 293 F. 1013, 34 A.L.R. 145 (D.C. Cir. 1923)	3
<i>In re Pers. Restraint of Davis</i> , 152 Wn.2d 647, 101 P.3d 1 (2004).....	8
<i>In re Yates</i> , 177 Wn.2d 1, 296 P.3d 872 (2013).....	8
<i>State v. Abuan</i> , 161 Wn. App. 135, 257 P.3d 1 (2011).....	10
<i>State v. Bland</i> , 71 Wn. App. 345, 860 P.2d 1046 (1993).....	10
<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	16
<i>State v. Jones</i> , 175 Wn. App. 87, 303 P.3d 1084 (2013).....	4, 7
<i>State v. Lizarraga</i> , 191 Wn. App. 530, 364 P.3d 810 (2015).....	10
<i>State v. Luvene</i> , 127 Wn.2d 690, 903 P.2d 960 (1995).....	10
<i>State v. Russell</i> , 125 Wn.2d 24, 882 P.2d 747 (1994).....	16
<i>State v. Smith</i> , 148 Wn.2d 122, 59 P.3d 74 (2002).....	17

Other Authorities

National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (2009),
<https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>..... 3, 5

President's Council of Advisors on Science and Technology (PCAST), *Report to the President Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (September 2016),
https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf 5

I. INTRODUCTION

In Martin Jones' direct appeal, this Court determined that the trial court properly admitted expert testimony on bunter marks, and that the forensic scientist who provided the testimony was qualified to do so. Amici argue that comparing bunter marks is not a valid science, and that the trial court erred in admitting expert testimony by an unqualified forensic scientist on the matter. These contentions simply repeat arguments that have no merit, and that this Court has already correctly rejected.

Amici further contend that the expert's analysis and testimony was inherently unreliable, due to the potential of "cognitive bias," and that the jury overweighed the expert's testimony. Amici provide no evidence to support any of these bare assertions. The jury was fully advised of the expert's qualifications and of all the potential external influences amici contend could have affected his opinions. The expert was fully cross-examined and the jury had the opportunity to weigh the criticisms that amici raise.

Jurors are presumed to follow the law. Here, the jury was provided with all the information necessary to evaluate the expert's testimony, and with instructions from the court to consider all factors in determining what weight, if any, to give his testimony. This Court should reject amici's

request to usurp the jury's functions by second-guessing its ability to properly evaluate and weigh evidence.

II. SUMMARY OF RELEVANT FACTS

In February 2010, Martin Jones shot Washington State Patrol Trooper Scott Johnson in the back of the head while Trooper Johnson was impounding Jones' vehicle. RP at 1315, 2826-27. Trooper Johnson survived the shooting and later identified Jones as his attacker. RP at 2859.

Investigators found a fired .22 short cartridge casing¹ on the ground where Jones shot Johnson. RP at 2231. Cascade Cartridge Incorporated (CCI) manufactured the fired .22 short cartridge casing found at the scene. RP at 2299, 2444-45. After Jones' arrest, investigators obtained a search warrant and searched Jones' home. RP at 2105. Investigators found a box of ninety-seven unfired .22 short CCI cartridges in a dresser drawer in Jones' bedroom. RP at 2122-23, 2460. This was the same brand and caliber of ammunition used to shoot Johnson. The fired .22 short CCI cartridge from the crime scene and the ninety-seven unfired CCI bullets from Jones' home had a "C" logo stamped on them, which is the logo for CCI ammunition. RP at 2445, 2461-62. CCI stamped its "C" logo onto cartridge casing heads using a "bunter," which is a hard metal tool that impresses a

¹ A "cartridge casing" (also called a shell casing) holds the bullet until the bullet is fired. The cartridge casing remains after the bullet leaves the firearm. When a pistol is used, the cartridge casing is ejected from the weapon when it is fired.

letter or symbol onto the softer metal base of a cartridge casing. RP at 2297, 2462.

Johan Schoeman, a forensic scientist from the Crime Lab, used a comparison microscope to conduct a tool mark comparison of the head stamp on the fired .22 short caliber CCI cartridge from the crime scene to the head stamps on the ninety-seven unfired .22 short caliber CCI cartridges from Jones' bedroom. RP at 2462. Schoeman concluded that the "C" logo on forty-eight of the ninety-seven unfired .22 short caliber CCI cartridges from the box in Jones' bedroom were stamped by the same bunter that stamped the "C" logo on the fired cartridge casing from the crime scene. CP at 1087-88; RP at 2475.

Jones moved to exclude Schoeman's testimony that the same bunter that stamped the "C" logo on the fired cartridge casing from the crime scene also stamped the "C" logo on forty-eight of the unfired cartridges in the box from Jones' bedroom. CP at 369-78. Jones moved for a *Frye*² hearing based on a report issued by the National Research Council of the National Academies of Science entitled *Strengthening Forensic Science in the United States: A Path Forward*. (NAS/NRC report).³ Based on the

² *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013, 34 A.L.R. 145 (D.C. Cir. 1923). Under *Frye*, novel scientific evidence is only admissible when it is based on methods that are generally accepted in the relevant scientific community. *Id.* at 1014.

³ National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>.

NAS/NRC report, Jones argued that tool mark evidence, in this case bunter mark evidence, was unreliable and no longer accepted in the relevant scientific community. CP at 369-78.

The trial court denied Jones' motion for a *Frye* hearing, finding that "bunter mark evidence is a type of tool mark evidence, and such evidence is not new and novel scientific evidence requiring a *Frye* hearing." CP at 1234. The court further found that expert testimony in this area would assist the trier of fact because such evidence is beyond the general knowledge of a layperson, and that Jones was not restricted in attacking the weight and credibility of any such evidence offered by the State. CP at 1234-35. The Court of Appeals affirmed all of these rulings. *State v. Jones*, 175 Wn. App. 87, 107, 303 P.3d 1084 (2013).

Jones fully cross-examined the State's expert regarding his qualifications and the reliability of the bunter mark evidence, including by making specific references to the NAS/NRC report. RP at 2475-2514, 2520-24. In closing argument, Jones argued at length that the bunter mark evidence was unreliable and should be disregarded. RP at 4019-25. Jones could have hired his own expert to refute the State's expert, but declined to do so. The jury was fully informed of all the information needed to weigh the qualifications of the State's expert and the reliability of the bunter mark evidence.

III. ARGUMENT

A. **Amici Provide No New Facts, Evidence or Argument To Support Their Claim That Bunter Mark Analysis Is Not a Valid Science Properly Subject To Testimony by a Qualified Expert**

The bunter mark evidence presented by an experienced forensic tool mark examiner did not mislead the jury. Comparing bunter marks is a valid science that has long-standing acceptance in the forensic science community. The State's expert was thoroughly cross-examined, thereby giving the jury all the information it needed to assess the weight and credibility of the expert's testimony.

1. **The relevant scientific community and the courts recognize that the analysis of bunter mark evidence is a generally accepted forensic science that is admissible in state and federal courts**

Amici claim that bunter mark analysis is not science, but they present no new argument. Like Jones, amici rely exclusively on reports by the National Research Council⁴ and the President's Council of Advisors on Science and Technology⁵ (PCAST) to forward their arguments. There is no material dispute within the relevant scientific community as to the scientific

⁴ National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>.

⁵ President's Council of Advisors on Science and Technology (PCAST), *Report to the President Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (September 2016), https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf.

validity of tool mark and bunter evidence. As detailed in the State's response to the personal restraint petition, the NAS/NRC and PCAST reports are merely impeachment evidence, and state and federal courts throughout the country have widely concluded that the NAS/NRC and PCAST reports do not affect the admissibility of tool mark and bunter mark evidence. See State's Response to Personal Restraint Petition at 65-74.

2. The Court of Appeals already held that the trial court properly admitted testimony by a qualified expert regarding the bunter mark evidence and amici present nothing new to allow those rulings to be reconsidered

The Court of Appeals has already rejected amici's arguments regarding the admissibility of expert testimony on bunter marks. The Court of Appeals has also already rejected the assertion that the forensic expert in this case was unqualified. Amici present no new evidence that entitles them to have this matter reconsidered in a personal restraint petition.⁶ The Court of Appeals held:

In this case, the trial court determined that the State's expert had the requisite experience and knowledge. He was a scientist trained as a firearms examiner who had examined over 3000 cases in South Africa and the United States. The trial court also determined that bunter mark evidence was

⁶ The Court of Appeals reversed Jones' conviction on a public trial violation. The opinion rejected other defense arguments including the admissibility of expert testimony regarding the bunter mark evidence, and the qualifications of the expert who testified. The Washington State Supreme Court reversed the Court of Appeals on the public trial issue, and affirmed Jones' conviction. The Supreme Court did not review the Court of Appeals ruling on the admission of expert testimony regarding the bunter mark evidence, and thus the Court of Appeals ruling on that matter remains the final decision on direct appeal.

beyond the general knowledge of laypersons and would thus assist the trier of fact in evaluating such evidence. In making this evidentiary ruling under ER 702, we hold that the trial court did not abuse its discretion.

State v. Jones, 175 Wn. App. 87, 107, 303 P.3d 1084 (2013).

The trial court record supports the Court of Appeals holdings and shows that amici's claim that Schoeman was unqualified to perform a bunter mark analysis is without merit. As pointed out by the Court of Appeals, Schoeman was a scientist trained as a firearms examiner who had examined over 3000 cases. RP at 2417-20. He had testified as an expert in court forty-one times. RP at 2418.

A tool mark "is a mark that gets left on a surface when a hard object comes into contact with a softer object." RP at 2418. Schoeman explained how tool marks are formed, and the scientific principles that allow forensic scientists to compare and analyze different types of tool marks. RP at 2418-20. Amici's argument that Schoeman had previously not specifically examined bunter marks is irrelevant because bunter marks are one of a countless number of tool marks that forensic scientists analyze. RP at 2462. Schoeman had previously examined thousands of pieces of tool mark evidence during the course of his fourteen-year career as a forensic scientist. RP at 2518.

The scientific principles behind examining tool marks are the same regardless of what type of object or surface is being examined. RP at 2419. Since tool marks simply require sufficient contact between two objects, the number of types of tool marks that exist is literally limitless. Arguing that a trained and highly experienced forensic tool mark examiner is only qualified to examine specific surfaces that he has examined before sets up an unattainable standard that misconprehends the science of tool mark analysis.

“The petitioner in a personal restraint petition is prohibited from renewing an issue that was raised and rejected on direct appeal unless the interests of justice require relitigation of that issue.” *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 671, 101 P.3d 1 (2004). The interests of justice are served by reconsidering a ground for relief if there has been an intervening change in the law or some other justification for having failed to raise a crucial point or argument in the prior application. *In re Yates*, 177 Wn.2d 1, 17, 296 P.3d 872 (2013). A petitioner may not avoid this requirement “merely by supporting a previous ground for relief with different factual allegations or with different legal arguments.” *Davis*, 152 Wn.2d at 671.

Here, there has been no intervening change in the law regarding the admissibility of testimony by a qualified expert. This Court’s decision

finding that expert testimony regarding the bunter mark evidence was warranted and that Schoeman was qualified to present it is final, and thus amici's attempt to have this Court reconsider arguments it has already rejected should be denied.

B. The Jury Was Fully Informed of All Relevant Aspects of the Bunter Mark Evidence and Amici Provide No Evidence To Support Their Speculative Claim That the Jury Overweighed the Evidence

1. The forensic scientist was not biased

Johan Schoeman, a forensic scientist from the Crime Lab, compared the head stamp on a fired .22 short caliber CCI cartridge recovered from the crime scene to the head stamp on ninety-seven unfired .22 short caliber CCI cartridges seized from Jones' bedroom. RP at 2462. Schoeman testified to his training and experience, to the procedures he used to analyze and compare the cartridges and to his conclusion that the "C" logo on forty-eight of the ninety-seven unfired .22 short caliber CCI cartridges from the box in Jones' bedroom were stamped by the same bunter that stamped the "C" logo on the fired cartridge casing from the crime scene. CP at 1087-88; RP at 2475.

Amici list a number of factors they contend *may* have biased Schoeman in his analysis of the bunter mark evidence. However, Amici

provide no *evidence* whatsoever that Schoeman was actually biased, and that such alleged bias influenced his analysis of the forensic evidence.

Amici attempt to forward their claim that Schoeman was biased by grossly mischaracterizing his testimony. Amici cite to report of proceedings 2436:18-19 and 2472:13 to claim that Schoeman “repeatedly and unfairly bolstered the alleged probative value of his opinion by peppering his testimony with terms such as ‘unique’ and ‘individual characteristics,’ which telegraphed to the jurors that the claimed ‘perfect match’ was highly probative evidence that the crime scene cartridge originated from Mr. Jones.” Amicus Brief at 14.

Schoeman’s testimony at RP 2436 does not support amici’s arguments because that testimony had nothing to do with the bunter mark evidence. Instead, that testimony referred to a different and unrelated analysis in which Schoeman concluded that two cartridge cases found at the crime scene were fired from Trooper Johnson’s service weapon. RP at 2436. That type of analysis, which determines whether a particular bullet was fired from a particular firearm, has been admitted in Washington courts for decades. See, for e.g., *State v. Lizarraga*, 191 Wn. App. 530, 542, 364 P.3d 810 (2015), *State v. Abuan*, 161 Wn. App. 135, 142, 257 P.3d 1 (2011), *State v. Luvene*, 127 Wn.2d 690, 696, 903 P.2d 960 (1995), *State v. Bland*, 71 Wn. App. 345, 349, 860 P.2d 1046 (1993).

In terms of the bunter mark evidence showing that forty-eight of the ninety-seven unfired CCI cartridge casings from Jones' home were stamped by the same bunter that stamped the fired cartridge casing collected from the crime scene, Schoeman never testified to those being "a perfect match," or anything that even implied that. Amicus Br. at 14. On the contrary, Schoeman testified only that the bunter mark on the fired cartridge from the crime scene showed "sufficient agreement" to the bunter marks on forty-eight of ninety-seven unfired cartridges seized from Jones' home to allow him to make a "positive identification." RP at 2472.

Schoeman showed the jury side-by-side images taken with a comparison microscope showing the fired crime scene cartridge and an unfired cartridge from Jones' home, and used these photos to explain the comparison process. Schoeman explained that when he compared the head stamp bunter markings side by side he observed both "similarities and dissimilarities" between the two cartridges. RP at 2467-69. Contrary to amici's claim, Schoeman did not "ignore" the dissimilarities he observed, but instead explained their significance to the jury. Schoeman explained:

During the manufacturing of that cartridge on the abet head, no two cartridges off of each head will be 100 percent the same. There will always be some similar, some microscopic differences that you would observe. But the similarities is more, is sufficient for me to determine that this would form an identification. In other words, that these were made by the same bunter.

RP at 2469.

The totality of Schoeman's conclusions belie amici's wholly unsupported claim that he was biased, and that such alleged bias caused him to make conclusions that were favorable only to the prosecution. Not only did Schoeman never claim he found "a perfect match" between the fired crime scene cartridge and some of the unfired cartridges found in Jones' home, but he also testified that only forty-eight of the ninety-seven cartridges found in Jones' home showed enough "sufficient agreement" to allow him to make "a positive identification." RP at 2472. Schoeman concluded that a second bunter stamped forty-eight other cartridges collected from Jones' home, and that a third bunter stamped one cartridge collected from Jones' home. CP at 1087-88; RP at 2475. All of these cartridges were in the same ammunition box in Jones' home. RP at 2122-23, 2460. These mixed findings can hardly be said to be the conclusions of a scientist that was biased towards the prosecution.

Additionally, Brett Olin, a development engineer employed by CCI provided testimony further explaining the value and limitations of the bunter mark findings.⁷ Olin testified that lot number G21E18, contained on

⁷ The State called Brett Olin as a witness. Mr. Olin has a Bachelor's of Science Degree in manufacturing engineering and an Associate Degree in small arms technology. RP at 2292. His duties as a development engineer for CCI include designing cartridge cases, head stamps, bullets, and developing propellant charges. RP at 2291. He testified

the box of ammunition found in Jones' home, showed that the lot was manufactured on July 21, 1999, and would have originally contained cartridges manufactured that same day. RP at 2301-04. Olin testified that a single bunter could last more than six months, and that during that time a single bunter could stamp over 25 million cartridges. RP at 2318. Olin provided several different reasons why cartridges from more than one bunter could end up in the same lot number. RP at 2304-06. Notwithstanding those reasons, Olin testified that it would "not be common" for cartridges from three different bunters to end up in the same lot of cartridges. RP at 2224.

A review of the entirety of Schoeman's testimony shows he provided careful, detailed, and unbiased testimony as to the scientific conclusions he made based on his training, experience, and duty as a scientist to form objective conclusions. The jury was fully advised of all information regarding Schoeman's expertise and of all the information necessary to thoroughly assess what weight to give his testimony.

2. **Jurors are presumed to follow the law and there is no evidence that the jury in this case did not scrupulously follow the court's instructions to carefully weigh Schoeman's testimony**

regarding the manufacturing process of CCI bullets, including the use of bunters in that process. RP at 2290-2328.

Jones' counsel thoroughly cross-examined Schoeman as to his qualifications, experience, and any alleged pressure placed on him in analyzing the evidence. RP at 2475-2514, 2520-25. The jury was fully informed as to all information that amici alleges influenced Schoeman's scientific conclusions and testimony. The jury heard testimony that Schoeman and Trooper Johnson, the victim in this case, were both employed by the Washington State Patrol, and that this investigation was a "top priority for the State Patrol." RP at 2476-77. The jury heard testimony that Schoeman knew that he was examining a fired cartridge found at the crime scene to unfired cartridges found in Jones' home. RP at 2504. The jury heard testimony that Schoeman received an email from a State Patrol investigator advising, "[W]e are looking to make a match any way possible." RP at 2498-99.

On cross-examination, Schoeman responded to accusations that he let external factors compromise his objectivity:

I am not going to let myself get influenced by what other people tell me, what and what not to do. I let the evidence speak for itself. I work with the evidence in front of me, and whether there [sic] the State or the prosecutor like it, or the defense like it, or doesn't like it, for me the work behind everything that I put into this case is of the utmost importance. I let the evidence speak for itself, and I will not get influenced by any other factors forcing me, or asking me to make a match when I know that it's possibly not possible, or yes, it is possible.

RP at 2500.

In closing argument, Jones argued at length that the bunter mark evidence was unreliable and should be disregarded. RP at 4019-25. The jury had all of this information, now repeated in amici's brief, when they assessed the weight they should give Schoeman's testimony and the value of the bunter mark evidence.

The jury was given jury instruction number four, the expert witness instruction, which advised them of the non-exclusive factors they should consider in judging the credibility and weight to give Schoeman's testimony. Instruction No. 4 provided:

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts. You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

CP at 1270.

The jury was also given jury instruction number one, a portion of which provided additional guidance on how to assess the weight of each witnesses' testimony. Instruction No. 1 provided:

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

CP at 1266.

The trier of fact, who has the opportunity to view the witnesses' demeanor and evaluate their testimony, determines credibility. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Credibility determinations are not subject to review. *Id.* Jurors are presumed to follow the court's instructions. *State v. Russell*, 125 Wn.2d 24, 84-85, 882 P.2d 747 (1994).

The jury was fully informed of Schoeman's training, experience, how he performed the bunter mark analysis, and of all the information amici alleges *could have* influenced his conclusions and testimony. The court instructed the jury that they were not bound by Schoeman's opinions, that they were the sole judges of his credibility and competence, and that they had the duty to determine what weight to give his testimony. No evidence

exists to believe that the jury did not scrupulously follow the court's instructions. Amici's claim that the jury improperly considered the testimony of any witness, including Schoeman's, is not supported by any evidence and should be rejected.

C. Any Error Was Harmless Error

Error is harmless if the court is "convinced beyond a reasonable doubt that any reasonable jury would have reached the same result without the error." *State v. Smith*, 148 Wn.2d 122, 139, 59 P.3d 74 (2002). The error claimed here was harmless beyond a reasonable doubt.

Amici greatly exaggerate the purported impact of the bunter mark evidence on Jones' case. Although the forensic expert testified that forty-eight of the ninety-seven unfired .22 caliber CCI cartridges collected from Jones' home were stamped by the same bunter that stamped a fired CC .22 caliber cartridge recovered from the crime scene, testimony by CCI development engineer Brett Olin also established that a single bunter could stamp over 25 million cartridges. RP at 2318. Olin further testified that it "would not be common" for cartridges from three different bunters to end up in the same lot of cartridges, as was found in Jones' case. RP at 2224.

The bunter mark evidence was a minor piece of the overwhelming evidence that showed Jones was guilty of shooting Trooper Johnson. Jones had a motive to shoot Trooper Johnson. After being stopped by another

trooper while driving intoxicated, Mrs. Jones sent a text message to Jones advising him that she had been pulled over. RP at 2627, 3238. Jones received and read the text message at midnight. RP at 2630. The Jones residence was approximately one mile south of the location where the Jones' van was stopped and where Jones shot Trooper Johnson. RP at 880. Jones arrived on foot after midnight and saw Johnson impounding his vehicle, and counting the money from his wife's purse. RP at 1313-15, 2818, 2825-26.

The victim eyewitness, an experienced police officer, testified that he had "no doubt" that Jones was the man who shot him. RP at 2859. Jones was on foot when he shot Johnson and ran off afterwards. RP at 2856. A K9 tracked Jones from the shooting to his house. RP at 1048-53, 1128-38. Jones tried to flee when police surrounded his home. RP at 1279-80, 1470, 2004. In his home, Jones had the same brand and caliber of ammunition as the bullet used to shoot Trooper Johnson. RP at 2122-23, 2231, 2299, 2444-45, 2460. Jones lied to police and told them he was asleep when his cell phone records showed that he was constantly on his cell phone during the relevant time period. RP at 3763; Ex 123, 125.

Jones would have been convicted with or without the admission of the bunter mark evidence. Any error in admitting the bunter mark evidence was harmless beyond a reasonable doubt.

IV. CONCLUSION

As this Court previously determined, the trial court properly admitted expert testimony by a qualified forensic expert. The amicus brief provides no evidence to support the contention that the expert was unqualified or that he provided biased or unreliable testimony. The Court should dismiss the personal restraint petition.

RESPECTFULLY SUBMITTED this 7th day of February, 2018.

ROBERT W. FERGUSON
Attorney General

By:



MELANIE TRATNIK, WSBA #25576
Senior Counsel
JOHN HILLMAN, WSBA #25071
Assistant Attorney General

NO. 50262-3

WASHINGTON STATE COURT OF APPEALS, DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

MARTIN A. JONES,

Petitioner.

DECLARATION OF
SERVICE

I, Nicole Symes, declare as follows:

On February 7, 2018, I sent via electronic mail and regular USPS mail, a true and correct copy of State's Answer to Brief of Amicus Curiae and Declaration of Service, addressed as follows:

Lenell R. Nussbaum
2125 Western Avenue, Suite 330
Seattle, WA 98121
lenell@nussbaumdefense.com

Kimberly N. Gordon
1111 3rd Avenue, Suite 2200
Seattle, WA 98101
kim@gordonsaunderslaw.com

Konrad L. Cailteux
767 Fifth Avenue
New York, NY 10153
konrad.cailteux@weil.com

Dana M. Delger
40 Worth Street, Suite 701
New York, NY 10013
ddelger@innocenceproject.org

M. Chris Fabricant
40 Worth Street, Suite 701
New York, NY 10013
cfabricant@innocenceproject.org

Emily Pincow
767 Fifth Avenue
New York, NY 10153
emily.pincow@weil.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of February, 2018, at Seattle, Washington.



NICOLE SYMES

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

February 07, 2018 - 1:35 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50262-3
Appellate Court Case Title: Personal Restraint Petition of Martin A Jones
Superior Court Case Number: 10-1-03735-9

The following documents have been uploaded:

- 502623_Briefs_20180207132652D2249931_7621.pdf
This File Contains:
Briefs - Answer to Amicus Curiae
The Original File Name was States Answer to Br of Amicus Curiae.pdf

A copy of the uploaded files will be sent to:

- cfabricant@innocenceproject.org
- ddelger@innocenceproject.org
- emily.pincow@weil.com
- johnh5@atg.wa.gov
- kim@gordonsaunderslaw.com
- konrad.cailteux@weil.com
- lenell@nussbaumdefense.com

Comments:

State's Answer to Brief of Amicus Curiae

Sender Name: Nicole Symes - Email: NicoleS4@atg.wa.gov

Filing on Behalf of: Melanie Tratnik - Email: melaniet@atg.wa.gov (Alternate Email: CRJSeaEF@atg.wa.gov)

Address:
800 Fifth Avenue
Suite 2000
Seattle, WA, 98104
Phone: (206) 464-6430

Note: The Filing Id is 20180207132652D2249931