

No. 92816-9

Court of Appeals No. 72478-9-1

IN THE COURT OF APPEALS, DIVISION ONE

In re the Personal Restraint of:

SIONE P. LUI,

Petitioner.

REPLY ON SUPPLEMENT TO PERSONAL RESTRAINT PETITION

By:

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I. REPLY ARGUMENT

The State maintains that the evidence pointing to Mr. Biagi does not meet the standards for “other suspect” evidence and is therefore inadmissible. The State points out that the constitutional right to present defense evidence applies only to evidence that is relevant. Lui certainly agrees that irrelevant evidence is inadmissible. But the standard for relevance is simply “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401. That a violent felon’s blood was found at the scene of the murder certainly makes it less likely that Mr. Lui was the killer.

The State also seems to argue that other suspect evidence is somehow disfavored, and that there is a high standard for admissibility. Recently, however, the Washington Supreme Court confirmed that the analysis is no different from that under ER 403, that is, that the probative value must outweigh any unfair prejudice. *State v. Franklin*, 180 Wn.2d 371, 380, 325 P.3d 159 (2014). *See also, Smithart v. Alaska*, 946 P.2d 1264, 1275-78 (1997) ¹ (cited with approval in *Franklin*) (Alaska follows same rule as Washington; the rule is “in essence, an attempt to apply this balancing of probative value against prejudicial impact [under Rule 403] in the specific context of evidence offered to show that a third party committed the crime.”). Further, the evidence against the other suspect

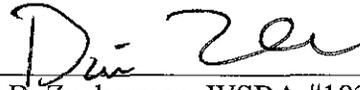
¹ *Reversed on other grounds*, 988 P.2d 583 (1999).

may be circumstantial. *Id.* at 381. (Of course, the evidence against Mr. Lui is likewise circumstantial.) The defense evidence need not prove that another person committed the crime. Rather, it need only help to create a reasonable doubt of the defendant's guilt. *Franklin*, 180 Wn.2d at 381.

Thus, the evidence against Mr. Biagi would be admissible at a new trial. Further, as shown in Mr. Lui's Supplement to Personal Restraint Petition, the evidence is sufficiently compelling to probably change the result.

DATED this 15th day of January, 2015.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served in the manner listed below, one copy of the foregoing Reply on Personal Restraint Petition on the following:

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