

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

<p>In Re The Personal Restraint Petition Of,</p> <p style="text-align: center;">KURTIS MONSCHKE, Petitioner.</p>	<p>No. _____</p> <p style="text-align: center;">DECLARATION OF BARBARA COREY</p>
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I, BARBARA COREY, under penalty of perjury pursuant to RCW 9A.72.085, do hereby declare as follows:

1. I am a United States citizen and a resident of the State of Washington. I am over the age of eighteen. I am competent to testify to the facts set out below. I make this declaration based upon my personal knowledge.

2. I am an attorney licensed to practice in the State of Washington having received my license in 1981.. After graduating from Law School I worked a deputy prosecutor for the King County Prosecuting Attorney's Office and then for the Pierce

County Prosecutor's Office. I worked for the Pierce County Prosecutor's Office from May 1, 1984 until January 28, 2004. I now am a sole practitioner and maintain an office and practice in Tacoma

3. While with the Pierce County Prosecutor's Office in 2003 I was assigned to four connected cases involving charges of Aggravated First Degree Murder. Those charges were initially filed against David Pillatos, Scotty Butters, Tristain Frye and Petitioner Kurtis Monschke. I remember the case because it involved issues related to white supremacists and I had not previously worked on a case with that feature. I have not read the case file on any of these defendants since I left the prosecutor's office in January, 2004, but I have done a cursory review of some relevant materials in order to refresh my memory of events for this declaration. In addition to that, in my recent civil trial, Corey v. Pierce County, the litigants made reference to this case. My primary focus was on *State v. Monschke*.

4. While prosecuting those individuals I was informed that two of the defendants, David Nikos Pillatos and Tristain Lynn Frye, were exchanging correspondence in what appeared to be an attempt to fabricate evidence. I personally read the confiscated correspondence at the time and based upon my review of the subject letters and other considerations I formed a professional opinion that those two individuals were indeed fabricating a story in an attempt to perpetrate a fraud on the Court and the prosecutor's office. I informed the Court of the nature of the correspondence and I advised that,

"Defendant Pillatos and Frye appear to be corresponding about the content of her testimony; these defendants apparently intend to pursue a theory that will exonerate defendant Frye so that she will be free to raise their child."

State's Brief, p. 2, Ls. 18-20.

5. Based upon my experience as a prosecutor with 22 years of experience (at that time) dealing with criminal defendants' behaviors, including numerous high profile cases, I reasoned that Pillatos' and Frye's versions of events were suspect in light of their correspondence and Pillatos' efforts to obtain a favorable plea agreement for Frye. For example, in one letter from Pillatos to Pillatos' father, the contents of which were obviously intended to be passed on to defendant Frye, Pillatos provides instructions to defendant Frye about her testimony as well as explanations about physical evidence from the crime scene. In that same correspondence Pillatos urges as "extremely important" that Frye quit representing that he, Pillatos, was not present at the scene of the crime. He tells his father that, "It is extremely important she quits denying I was there with her."
(sic)

6. After considering the facts of the cases¹, including the herein noted correspondence between Pillatos and Frye and their post-arrest behavior, I concluded that Pillatos' and Frye's efforts were not those of remorseful individual seeking to cleanse their conscience through honesty and acceptance of responsibility. My experience and the facts told me that Pillatos was attempting to reduce Frye's exposure, something I know he personally desired, by having her admit he was present at he crime scene and then having her assert the exculpatory claim that he, Pillatos, forced her to assault Randall Townsend. Pillatos explained the plan to Frye in not-very-well-disguised language in one of the confiscated letters: "because you never assaulted the man of your own free will *if at all*." (Emphasis added by me). Additionally, Pillatos had an eye to his

¹ I reached these conclusions contemporaneous with the prosecution of the four individuals in 2003, right after discovering the exchange of letters between Pillatos and Ms. Frye.

own diminished capacity defense when he began reminding Frye that it would be helpful to him if Frye recalled that he wasn't himself the night they murdered Randall Townsend. Pillatos wrote to Frye reasoning that, "Besides if you think I wasn't myself that night it might help."

7. In addition to informing the court of Pillatos and Frye's correspondence activity the mater was also discussed internally by members of the Pierce County Prosecutor's Office. Pillatos and Frye's efforts to manipulate the plea and trial processes were known to Prosecutors Gerry Horne, Jerry Costello, Greg Greer, and other deputy prosecutors and police detectives.

8. Ms. Frye did indeed obtain what I believe is a most favorable plea agreement and sentence. She was allowed to plead guilty to second degree murder; she was sentenced to 165 months which term represents the bottom of the guideline range of 165 to 265 months. Ms. Frye's range was based upon her criminal history that included four prior convictions.

9. As a member of the prosecution team I was against giving Ms. Frye a reduced sentence. The mitigation package provided by her attorney was only one or two pages in length and did not contain, in my view, reasons sufficient to warrant a reduced sentence especially in light of her level of involvement in the murder of Randall Townsend. An unbiased eye witness, Ms. Cindy Pitman, stated that Ms. Frye hefted a huge rock and smashed it over Mr. Townsend's head.

10. When Ms. Frye's mitigation packet arrived at my office I asked my supervisor Jerry Horne for permission to seek a revised packet. Mr. Horne informed me that I could do so. I asked Ms. Frye's attorney to provide additional information and she

laughingly told me that Gerry Horne had already informed her that he would not seek the death penalty for Ms. Frye. She may have provided some meager additional materials, but she never provided a comprehensive and detailed mitigation packet such as defendants in her circumstances generally do.

I was also aware from Ms. Frye's correspondence that she informed a family member in the spring of 2003 that the prosecutor had decided not to seek the death penalty on her. This was several months prior to the death penalty staffing.

Gerry Horne later decided (and I respect his authority to make the decision, if not the actual decision) that Ms. Frye would be given a favorable plea agreement. I expressed my objections and pointed out that Ms. Frye's involvement in the murder of Mr. Townsend was far from minimal according to eyewitnesses. Mr. Horne informed me that Ms. Frye would be offered an opportunity to plead guilty to second degree murder and a specific amount of months would be the recommendation to the Court. Such plea was offered because mitigating facts existed that supporting leniency. I believe the plea offer likely was based on personal issues. I know that Ms. Mandel, Ms. Frye's attorney, has been a close friend of Gerry Horne's at least since 1984.

I know this because Gerry Horne often discussed his friendship with Ms. Mandel.

11. The process utilized by Mr. Horne to decide to offer Ms. Frye a plea agreement was unusual and its terms were inconsistent with the prosecutorial standards of the Pierce County Prosecutor's Office as I knew them to be for the entire time I worked there. The terms of the plea agreement offered to Frye and ultimate sentence she received constituted, in my professional prosecutorial judgment, an unfair

boon to Ms. Frye that she did not deserve. I note that the Pierce County Prosecuting Attorney's Office has never adopted written charging and disposition standards as have other Washington counties such as King, Kitsap, etc. Tristan Frye's participation in Mr. Townsend's murder was brutal and went far beyond the point where it could be said to be so limited as to justify a mitigated shorter term than ; it certainly was not the forced participation that Ms. Frye claimed. Consequently, the very favorable agreement for Ms. Frye resulted in an equally unfair result to Kurtis Monschke who was, according to the evidence, less culpable than Ms. Frye but who received sentence of Life Without the Possibility of Parole.²

12. It is noteworthy that the Tacoma Police Department lead detective John Ringer recommended that if the state wanted a testimonial codefendant, the state should deal with Scotty Butters. This issue came up in my recent civil case and I learned that the other individuals involved now assert that det. Ringer always wanted to deal with Ms. Frye. I stand by my statements that in 2003, det. Ringer recommended a deal with Butters. I believe that some historical revisionism occurred as a result of discussion of this issue in my civil case.

13. I was present to view the content of an offer of proof from defendant Frye. She therein averred that she had kicked the decedent so hard that she had injured her foot.

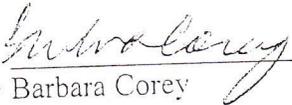
14. I was present for an offer of proof from defendant Scotty Butters.

² As it turned out Mr. Pillatos and Mr. Butters received terms (360 months each) that were significantly less than the one imposed upon Mr. Monschke despite the well known fact that both Messieurs Butters and Pillatos were far more responsible for the brutality inflicted upon, and ultimate death of, Mr. Townsend. At least it can be said in those two cases that the imposition of the shorter terms was due to the State Supreme Court's court-imposed limits placed on the prosecution's ability to seek exceptional sentences. Unlike the Frye case, the injustice of the shorter sentences for Butters and Pillatos was not the result of an unjust deal given by the Prosecutor because of a friendship with the defendant's attorney.

15. I believe that defendant David Pilatus also provided an offer of proof to the prosecutor as I was so informed by one of the deputy prosecutors who handled that case.

I declare under penalty of perjury that the above is true and correct of my own knowledge and belief.

Done this 30th day of Sept, 2008 at Tuolumne, Calif.


; Barbara Corey