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FEATURE:

Meet Exoneree
Ray Krone

7

the **undisputable facts**



242 There have been **242** post-conviction DNA exonerations in the United States.

1989 The first DNA exoneration took place in **1989**.

17 **17** of the 242 people exonerated through DNA served time on death row.

12 The average length of time served by exonerees is **12** years. The total number of years served is approximately 3,005.

26 The average age of exonerees at the time of their wrongful conviction was **26**.

143 The racial breakdown of the exonerees is **143** African Americans, 70 Caucasians, 21 Latinos, 2 Asian American, and 5 whose race is unknown.

getting to know the arizona justice project

The Arizona Justice Project was established in 1998 and became the fifth organization in the United States created to help inmates overturn wrongful convictions. Today, there are more than 40 similar organizations throughout the country. Indigence is frequently associated with injustice and the quality of justice suffers as a result. To prevent denial of access to justice, members from the Arizona Attorneys for Criminal Justice founded the Justice Project in 1998. Its mission is to represent indigent Arizona inmates whose claims of innocence or manifest injustice have gone unheeded. Every time an accused goes to prison without having received a fair trial we are one step closer to the loss of our own freedoms. In fact, there is no greater punishment than that imposed on the innocent.

Housed at the Sandra Day O'Connor College of Law at Arizona State University, the Arizona Justice Project is primarily a volunteer-based organization that reviews and assists in cases of actual innocence or cases in which a manifest injustice has occurred. To date, the Project has reviewed over 2000 cases, and currently has 45 cases in court or under the supervision of a review team. Oftentimes, the Project is a last resort for men and women who have been failed by our justice system. Their voices would go unheard and sadly, many

innocent people would remain wrongfully behind bars without the hard work of our Project volunteers.

Our review teams consist of a faculty supervisor or volunteer lawyer paired with law students from the Arizona State University College of Law, University of Arizona College of Law, and Phoenix School of Law. In addition, the Project is fortunate to have the help of some of the best investigators in Arizona, who spend countless hours tracking down vital information, witnesses and evidence in our cases.

In an ongoing effort both to correct past injustices and prevent future wrongful convictions, the Project has designed this newsletter to help educate the public on the misconceptions surrounding wrongful convictions and why these atrocities occur within the legal system. We will also keep you up-to-date on our various cases under review, CLE events, legislative projects, ground-breaking forensic science and much more.

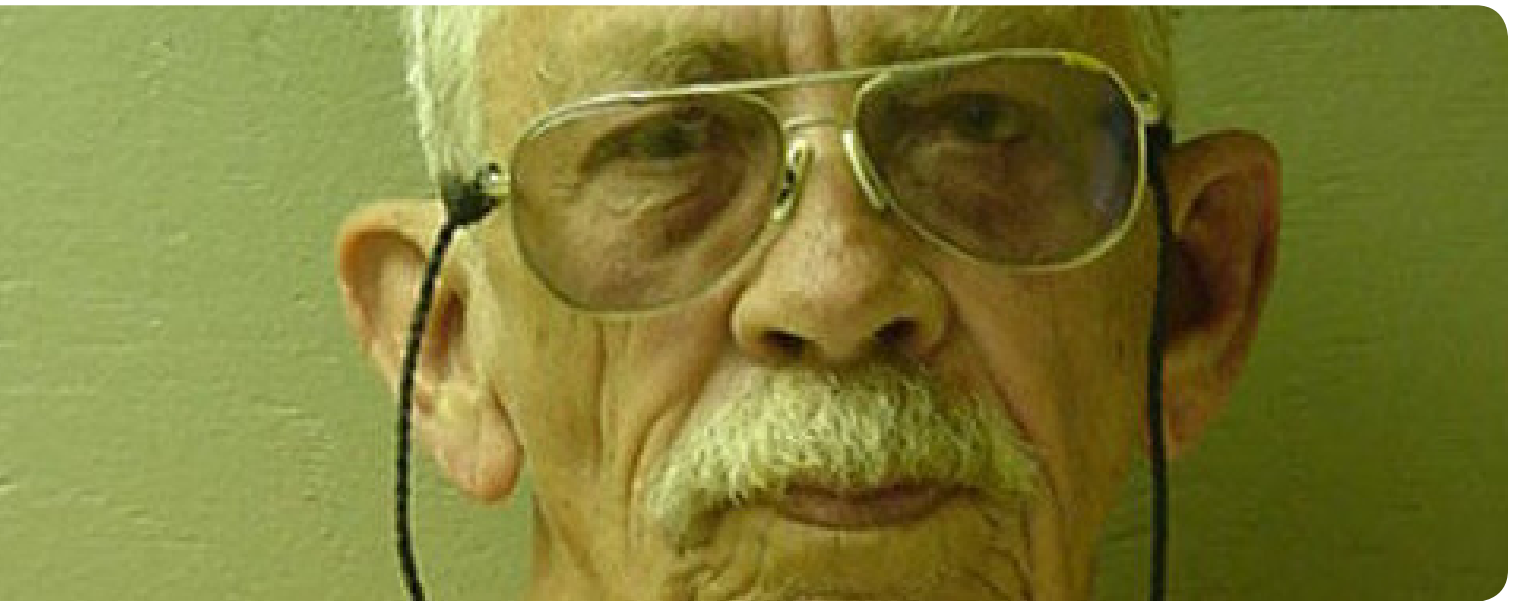
The Project always welcomes your suggestions and questions by e-mail at: info@azjusticeproject.org

here are some more **interesting facts** about the **justice project**:

- The Justice Project enjoys a collaborative relationship with Arizona's law schools. Now housed at the Sandra Day O'Connor College of Law at Arizona State University, the Project receives the benefit of a close relationship with the law school's nationally recognized experts in forensic science and DNA. The Project also works hand-in-hand with the school's newly formed post-conviction clinic. The Project also continues its close relationship with the James E. Rogers College of Law at the University of Arizona, and Phoenix School of Law, using student and faculty volunteers on many of the Project's cases.
- Most of the Justice Project's cases do not involve DNA, or the DNA would not provide convincing evidence of guilt or innocence.
- The Justice Project, in a unique partnership with the Attorney General's Office and the Arizona Criminal Justice Commission, recently received a grant from the National Institute of Justice for post-conviction DNA testing of forcible rape, murder, and non-negligent homicide cases that might demonstrate actual innocence.
- The Justice Project currently has over 135 student volunteers from the Sandra Day O'Connor College of Law, the James E. Rogers College of Law and Phoenix School of Law. And, 140 attorneys have volunteered their time to the Justice Project.

newsworthy **developments**

the macumber case



Bill Macumber's case has touched the lives of an almost uncountable number of Arizona Justice Project students and a host of volunteers from a wide array of professions—investigators, forensic experts, law faculty and others. We have all come to share the belief that Macumber has been wrongfully convicted. Macumber has always maintained his innocence and there is compelling evidence to support his claim; however he remains behind bars for one simple reason. There is no DNA in his case. The sad reality is that, without the overwhelming proof of indisputable innocence that comes with DNA, no amount of other evidence is likely to satisfy the very high barriers against post-conviction exoneration. Sadly, Macumber's claim of innocence likely cannot be re-adjudicated in a courtroom, nearly 50 years after the crime occurred and 35 years after the trial. There is no evidence left to test and the man who confessed to the killing is dead. In situations like this, clemency is his only avenue for relief. The Justice Project recently represented Macumber in his clemency proceedings. Macumber had his Phase 2 Hearing in front of the Board of Executive Clemency on May 8, 2009, at Alhambra in Phoenix. The room was packed with Macumber supporters and the Board voted unanimously for clemency. The Board's recommendation is now in the hands of the Governor's Office, and we are waiting to hear if she will grant clemency. Below is the horrifying tale of the Macumber case.

The Story

In the early morning of May 24, 1962, the bodies of Tim McKillop and Joyce Sterrenberg were found in what was then open desert area near the intersection of Scottsdale and Bell Roads (now the grounds of the Fairmont Scottsdale Princess Resort). Both victims had been shot in the head and were lying near Ms. Sterrenberg's 1959 Chevrolet Impala.

Investigating officers from the Maricopa County Sheriff's Office ("MCSO") recovered several .45 caliber shell casings and the remnants of one .45 caliber soft-nosed slug from the scene. Also recovered from the ground at the scene were a handkerchief and thatch of human hair. Tire tracks and various footprints thought to belong to the killer(s) were also found. In the afternoon of May 24, MCSO deputy Jerry Jacka lifted several latent fingerprints from the Impala after the vehicle had been towed downtown for processing.

Although the investigation of the murders was intensive, it did not yield any suspects until September 1962. At that time, a 17-year-old girl named Linda Primrose told MCSO investigators that she had witnessed the murders. According to Primrose, on May 23, 1962, she had ridden with a female named Terry and several men, including one known to Primrose as Ernie Salazar, to a desert area north of Bell Road to look for a stash of drugs. When they encountered another car near the drug stash, Ernie argued with the occupants of the car, a man and a woman, and eventually shot and killed both of them.

Details of Primrose's story matched those of the McKillop/Sterrenberg murders, including details about whose thatch of hair was potentially at the scene (Terry's). Primrose also successfully led MCSO officers to the scene of the crime and, according to an investigating officer, "knew where she was going." Primrose "passed" a lie detector test and a psychiatrist who interviewed her opined that she was being truthful.

In 1964, an inmate in the Maricopa County jail, Ernie Valenzuela, told his cellmate that he had committed the McKillop/Sterrenberg murders. While in the Scottsdale city jail in August 1964, Valenzuela repeated his story to a psychiatrist (who reported that Valenzuela was extremely dangerous) and to the sheriff's office. However, Valenzuela

was not charged with or held on the McKillop/Sterrenberg murders, and he was released after serving three years in prison on other charges.

In 1967, Valenzuela committed and was charged with a murder on a federal reservation in Arizona ("1967 murder"). During an interview with his attorney, Thomas O'Toole, of the Federal Public Defender's Office, Valenzuela again volunteered that he had committed the McKillop/Sterrenberg murders, this time providing more details. Valenzuela, as Mr. O'Toole recounted, "apparently came upon McKillop and Sterrenberg out in the desert, and he used the phrase, 'I shot him like a rabbit' describing apparently the male. . . . He [also] used the name McKillop and Sterrenberg," Valenzuela subsequently repeated his confession to a defense psychiatrist (after being injected with sodium pentothal) and to his subsequent attorney in the 1967 murder, Ron Petica. Valenzuela eventually was convicted of the 1967 murder and sentenced to 15 years. Valenzuela died on November 8, 1973, after being stabbed during a prison confrontation at the federal penitentiary in Leavenworth, Kansas. None of his confessions about the McKillop/Sterrenberg murders were at the time publicly known.

Bill has never admitted to killing the victims and always maintained his innocence.

More than twelve years after the homicides, in August 1974, Carol Macumber, an 18-month employee of the MCSO, reported to her employer that three months earlier, her husband Bill Macumber told her that he had killed McKillop and Sterrenberg. This alleged confession was made only to Carol and not repeated during any "subsequent interview." In fact, Bill has never admitted to killing the victims and always maintained his innocence. As discussed in greater detail below, Carol certainly had motive to lie. Carol stated that one evening in May 1962, Bill had come home about 10:00 p.m. with blood on his shirt but that he had told her that he had been in a fight with some teenagers. Interestingly, throughout the media saturation immediately following the McKillop/Sterrenberg murders in 1962, Carol apparently suspected nothing because she made no report to MCSO regarding the purported bloody-shirt incident. The MCSO subsequently interviewed Bill, who denied committing the murders. The MCSO obtained a .45 caliber handgun and a set of fingerprints from Bill. The State's experts concluded (a) that a partial latent lifted from Sterrenberg's Impala (Latent Lift #1) matched Bill's, and (b) that ejector markings on the shell casings that had been found at the scene matched ejector markings made by Bill's .45 caliber handgun. On this evidence alone – a confession 12 years after the crime, a partial fingerprint, and ejector markings on a bullet casing, Bill was convicted of the first-degree murders of McKillop and Sterrenberg.

In 1975, Bill was sentenced to serve two concurrent terms of life imprisonment. However, the Arizona Supreme Court reversed the convictions on the ground that the trial court erroneously excluded testimony by a defense expert who would have challenged the testimony of the State's expert that the ejector markings on the shell casings found at the scene showed the shells must have been fired by Bill's handgun. *State v. Macumber*, 112 Ariz. 569, 570-71, 544 P.2d 1084, 1085-86 (1976).

Bill Macumber was re-tried in 1976-77. At that trial, the State's case

consisted primarily of the testimony of Carol Macumber about Bill's alleged confession to her and the bloody-shirt incident; expert testimony concerning the match between Latent Lift #1 and Bill's palm print; and expert testimony regarding the match between the ejector marks made by Bill's .45 and the ejector marks on the shell casings that had been found at the scene of the crime. The defense, which had not known about Linda Primrose prior to the first trial, called her as a witness but she recanted the statements she had made in 1962, testifying that she had made up those statements because she was mad at her mother. (At the time of the second trial, Ms. Primrose was married and had children of her own.)

The defense also presented expert testimony that (a) challenged the State's shell casings evidence and (b) indicated that it was possible to transfer latent fingerprints from one fingerprint card to another. Despite Valenzuela's confessions to a cellmate, to his two attorneys and to a psychiatrist, the trial court refused to permit the defense to present evidence regarding Ernest Valenzuela's 1964 and 1967 confessions, ruling that it was hearsay that lacked "sufficient circumstantial probability of trustworthiness." *State v. Macumber*, 119 Ariz. 516, 521, 582 P.2d 1962, 1067 (1978). Bill was convicted and given consecutive life sentences. The Arizona Supreme Court affirmed the convictions but held that the life sentences could not be imposed consecutively.

The Justice Project's Involvement

The Justice Project began work on the Macumber case in 2000. The Project's file review and initial investigation disclosed the following:

- None of the exhibits including the finger and palm prints and the shell casings were in the files of the Superior Court or the MCSO.
- The breech face, firing pin, and extractor marks made by Bill's Ithaca .45 did not match those on the shell casings found at the scene. The State's firearms expert theorized that this was because the slide, firing pin, and extractor had been replaced in Bill's gun. The same expert relied solely on ejector marks to connect Bill's gun to the shell casings from the scene. Because neither the shell casings nor the photomicrographs used by the State's expert have been located, it is not possible now to re-examine the extent to which the ejector marks on the shell casings from the scene actually "matched" the marks on casings fired by Bill's Ithaca .45. Nevertheless, there are several reasons to question seriously the probative value of the ejector marks. Perhaps most importantly, even today there is no database of ejector marks from which experts can determine how unusual any particular mark (or pattern of marks) is. Consequently, there is no real basis for the assumption on which the State's firearms expert in *State v. Macumber* relied -- that each individual gun makes ejector marks that are unique to that gun. This is the primary problem that led the 2009 National Academy of Sciences Report, *Strengthening Forensic Sciences in the United States: A Path Forward*, to conclude that "[w]ith the exception of nuclear DNA analysis, . . . no forensic ["individualization"] method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual and source." And the consensus even among firearms experts is that ejector

marks may not be used to identify individual firearms. See, e.g., *United States v. Prochilo*, 187 F.3d 221 (1st Cir. 1999). This is especially so with firearms and ammunition that have been mass produced. In that regard, the Ithaca Gun Company manufactured approximately 3.5 million “1911 A1” .45’s primarily for government use, and also manufactured about 4 million “spare” ejectors. In addition, the type of shell casing found at the scene was mass produced by the Western Cartridge Company (which by the end of World War II had produced some 15 billion rounds of ammunition).

- With regard to the latent lift evidence, questions remain about Carol’s role, if any, in the reported match between Bill’s palm print and the Latent Lift #1 that was allegedly lifted by Jerry Jacka from the Impala. No independent or corroborating evidence exists that the Latent Lift #1 – used to convict Bill Macumber – was in fact Latent Lift #1 lifted by Jerry Jacka on May 24, 1962. By her own testimony, Carol Macumber had received training on how to lift latent fingerprints, including through classes at Glendale Community College and training at the MCSO. It is also worth noting that fingerprinting was included in the forensic “individualization” methods that the 2009 National Academy of Sciences Report concluded had not been rigorously tested.
- A substantial number of the MCSO’s Departmental Reports on the case are missing.
- Carol and Bill Macumber were experiencing serious marital difficulties in 1974, and Carol had moved out of their home some months before she told the MCSO that Bill had “confessed” to the McKillop/Sterrenberg murders in April 1974. Carol and Bill were divorced in April 1975. Custody of their three sons was very much in question. Indeed, there was good reason for Carol to fear the loss of custody. Simply put, Carol’s timing in reporting these homicides calls into question her credibility. She reported the alleged confession at a time when she potentially stood to reap personal gain in the divorce and custody proceedings. Carol had motive to lie and access to the evidence, as discussed below.
- When she turned Bill in, Carol Macumber was employed in the MCSO’s Identification Bureau, where she would have had access to the files and physical evidence relating to the McKillop/Sterrenberg murders. Carol admitted at the 1977 trial that she might have read the files, and indeed some of the “details” attributed by Carol to Bill can be found in MCSO Departmental Reports regarding the McKillop/Sterrenberg murders. For instance, on May 11, 1966, MCSO took a report on one Leonard Lester McFord II, who allegedly posed as Military C.I.D. looking for AWOL soldiers. Carol’s testimony suggested having read this Departmental Report: Macumber “stated to me that he was under orders from the CID, that the CID had told him that there would be two subjects at the A&W Root Beer Stand in Scottsdale.”
- Sources of potential DNA evidence (and therefore exonerating evidence) are now missing. Most importantly, the handkerchief found at the scene was described by Carol as belonging to Bill and had come from the glove compartment of his truck. Even today, DNA evidence could confirm or refute Carol’s claim. DNA from the thatch of hair found at the scene might also be used to confirm or refute Linda Primrose’s story. That evidence is gone.

- The McKillop/Sterrenberg murders were seen as a drug-deal-gone-south and drugs were seen as the motive for the homicides. Bill had absolutely no history of drug use or drug dealing, hence no motive.

Macumber Still Sits in Prison

Not only do the above facts shed substantial doubt on the conviction, the crime was completely out of character for Mr. Macumber. At the time of his arrest, Mr. Macumber had no criminal record and no history of violence or involvement with drugs. In his 35 years in prison he has had one minor infraction, and nothing involving violence.

To believe that Mr. Macumber committed the McKillop/Sterrenberg murders, one would have to believe all of the following facts:

- That Mr. Macumber stayed silent for 12 years about the murders but then suddenly confessed to his wife – an employee at the Sheriff’s Office – just as he was getting ready to face a divorce and custody battle and as his wife was facing dismissal from the MCSO for improprieties on the job;
- That Mr. Macumber’s wife could remember the exact date 12 years prior when he came home one night with blood on his shirt;
- That Mr. Macumber held on to a gun he used in a murder for 12 years;
- That Linda Primrose lied when she initially came forward with specific details of the crime but was able to fool a lie detector test; and
- That Ernie Valenzuela convincingly lied to his cellmate, a couple of psychiatrists, an officer from the Sheriff’s department, his attorneys, and lie detector examiner and took responsibility for two murders he did not commit.

Thus, to believe all of these facts is implausible and is unsupported by the questionable evidence against Mr. Macumber. Because of this and the newly discovered evidence that tends to support his innocence, every member of the Board of Executive Clemency at least has substantial doubt as to Mr. Macumber’s guilt. The Board voted unanimously to grant Macumber clemency for his release from prison, and sent their recommendation to the Governor’s Office. Macumber awaits her decision.



MEET EXONEREE RAY KRONE

and learn what went wrong

The Story

This is the story of a man named Ray Milton Krone - an ordinary man whose life was turned upside down when he was wrongfully convicted of a murder that took place in Phoenix in 1991. Despite his innocence, and despite a lack of evidence tying him to the crime, Krone was twice convicted by juries of his peers right here in Phoenix, Arizona. Krone spent more than two years on death row, and more than ten years behind bars before he was finally exonerated by DNA testing of biological evidence gathered from the crime scene.

Ray Krone was something of an ordinary guy – no record of violence, no criminal past ... not the sort of person you would expect to end up on death row. He was an above-average student, honorably discharged from the U.S. Air Force, and employee of the U.S. Postal Service, had no criminal history, and no history of violence.

One thing out-of-the-ordinary about Ray Krone was that he was a regular patron of a bar that was the scene of a chilling murder shortly after Christmas day in 1991. The CBS Lounge was a casual bar and restaurant located between a shoe store and a video store in a Phoenix strip mall at 16th Avenue and Camelback Road.

On the morning of December 29th 1991, the owner of the CBS Lounge arrived to find the front door unlocked. Inside, he discovered a grisly scene. A pool of blood seeped under the men's room door. Inside the men's room, Kim Ancona, a manager at the bar, was found lifeless and naked, with a row of stab wounds like a necklace across her neck. She had been sexually assaulted and there were bite marks on her left breast. The night before, Kim had worked her first shift as bar manager, and was in charge of closing the bar– including cleaning the floors and restrooms – after the bar's last customers had left for the night around 2 a.m.

The murder scene was full of evidence. The murder weapon— a knife from the bar's kitchen — was found underneath a plastic bag in the men's room trash can. There were fingerprints all over the scene, including prints on the condom machine and on the inside of the men's room door. Police lifted 50 prints, and gathered seventeen hairs from Kim's body. The newly cleaned floors also left a clear trail of footprints leading into the kitchen and into the men's room. There was a mix of various body fluids at the scene — blood on Kim's clothes, saliva on Kim's tank top, cheek, and pubic area, a small amount of semen. And, of course, the now-famous bite mark evidence. Kim had left her purse on the counter of the bar. It was apparently undisturbed by the murderer. Inside was Kim's address book and note pad, listing Ray Krone's name and phone number. A colleague told police that a man named Ray was going to help Kim close the bar that night. Police quickly focused on Ray Krone as a potential suspect.

Police searched Krone's house and car. They seized shoes and clothes from his laundry room dryer. Detective Gregory noticed Krone's crooked teeth — which had been caused by an auto accident some years earlier -- and asked Ray to bite into a Styrofoam plate to make a bite-mark impression. A dental examiner, Dr. Piakis, found Krone's teeth "consistent with" the bite mark on Ancona's breast. Krone denied being in a relationship with Ancona, a statement seemingly contradicted by statements from some of Kim's colleagues. Police believed they had their man. Ray Krone was arrested on December 31st 1991 and was charged with rape, kidnapping and murder. He began serving what would turn out to be more than a decade behind bars. Because of his unique dental structure, and the apparent connection between his teeth and the bite marks on the victim's body, Ray Krone would come to be known as the 'Snaggle-toothed Killer'.

Krone's first trial started on July 27th 1992. It lasted only 8 days. Prosecutors focused on the apparent relationship between Kim and Krone, a number of scientific coincidences and the Bite Mark Evidence. A friend of Kim's testified that Krone had given Kim a ride home after Kim helped close the bar a few days before the murder. The two apparently shared a brief kiss under the missletoe at a Christmas party. Another woman testified that Kim told her someone named 'Ray' was going to help her close on the night of the murder. In fact, Ray had gone to bed early that night, and his roommate testified to that, but police and prosecutors sought to debunk the alibi by pointing out that Krone could have left in the middle of the night, committed the murder, and then returned without the roommate knowing.

Krone never denied that he knew Kim Ancona. He did, however, deny having "been with" her — a reference that he thought had a sexual connotation. Police and prosecutors, however, interpreted this statement as a denial of any association with Kim. They characterized this, along with Krone's apparent nervousness when he was first interviewed, as the outward signs of a guilty conscience. Krone testified that he and Kim had never dated, but admitted that he had seen her on several occasions outside of the bar, including at the Christmas party.

Forensic Evidence from the crime scene was largely inconclusive. Krone and Kim had similar hair, so he could not be excluded as a possible source of hairs that were analyzed by the police crime lab. DNA tests were inconclusive, using the technology then available.

Fingerprint evidence was found to be inconclusive. Krone and Kim had the same blood type, type O. Investigators concluded that no other person's blood could be isolated from the large amount of Kim's blood at the scene.

It would be surprising, from all the evidence of a brutal struggle at the murder scene, if the murderer had not also been injured during the killing. A photo of Kim's underwear shows a droplet of what was later found to have been the murderer's blood. This evidence was not tested before trial.

The centerpiece of the State's case against Krone was the bite-mark evidence. The prosecution argued that bite marks were like fingerprints. A cast made of Krone's teeth was compared to the teeth impressions on Kim's breast. The strength of this evidence was bolstered by Krone's unique dental structure, which the State's expert concluded was a match to the bite marks left on Kim Ancona.

The prosecution's star witness was Dr. Raymond Rawson, a Nevada state Senator, college professor and deputy coroner, who had a persuasive demeanor. He presented a video comparison of Krone's dental mold to the victim, which seemed to show beyond a doubt the "perfect match" between Krone's teeth and the bite marks left by the killer. The defense denied that the bite-mark on Kim was made by Ray Krone. Their expert, however, was a mere dentist, without the credentials of Dr. Rawson. The most damning evidence was Dr. Rawson's video, which allowed members of the jury to see with their own eyes the seemingly perfect match resulting from overlaying Krone's teeth mold onto the photographic evidence of the bite mark. This video was first made available to the defense on the eve of trial. Jeffrey Jones, Krone's lawyer, requested a continuance and sought to exclude Dr. Rawson's video based on its late disclosure. Both motions were denied.

The most remarkable thing about Ray Krone's conviction was the lack of any corroborating evidence tying Krone to the crime. It was a circumstantial case based on a few coincidences, a seemingly innocent choice of words, and little else — except for the bite-mark evidence. Nonetheless, the jury found Krone guilty of kidnapping and murder. Krone was sentenced to death based on the judge's finding that the bite mark-- inflicted near to or after the time of death — demonstrated that the murder was especially cruel, heinous or depraved.

On direct appeal to the Arizona Supreme Court, Krone's conviction was overturned because of the late disclosure of Dr. Rawson's video. As Justice Martone noted, the bite-mark evidence had been critical to the State's case, and the late disclosure of their critical video could not be written off as harmless. Still convinced of his guilt, the State re-tried Krone in 1996. This time, thanks to financial assistance from his family, Krone was able to hire private counsel. His lawyer, Chris Plourd, conducted a meticulous investigation, uncovering much evidence that brought renewed hopes for a judgment of acquittal. The second trial lasted seven weeks. But ultimately, the trial focused on three categories of physical evidence: Bite Mark Evidence, Shoeprint Evidence, and DNA Evidence.

Other than these issues, much of the case amounted to little more than Prosecutorial Spin — making much out of seemingly innocuous facts, such as Ray Krone's having done his laundry in the days after the murder, his failure to cover his car on the night of the murder, and the discovery of shuffleboard wax beads from the CBS Lounge in

Krone's car. And again, the State's most persuasive evidence came from its bite-mark experts. The State's experts, Dr. Rawson and Dr. Piakis, testified once more, this time contending there were two bite marks on Kim's breast which, after intensive analysis, matched the unique dentition of Ray Krone.

This time, four defense experts questioned the methodology, the experience, and the conclusions of the State's witnesses. They accused the State's experts of making up a second bite to cover up their inability to create a match between Krone's teeth and the single bite they saw reflected in the marks on Kim's breast. They also attacked the credibility of the State's experts in other ways. Dr. Piakis had falsely claimed to be a board-certified forensic odontologist at the first trial. He had also been warned early on by a mentor, Dr. Steven Sperber, that Krone's teeth did not match the bite wound on Kim. And Dr. Rawson was a maverick with controversial theories and methodologies. His persuasive video presentation had been created on his home computer, through manipulation of images, including the shrinking of Krone's teeth to obtain an overlay match. Defense Expert Dr. Vale disputed whether bite mark analysis under the circumstances could ever be conclusive. Yet the State's bite-mark evidence once again proved compelling to the jury. Members of the jury, in fact, are reported to have done their own experiment in the jury room, matching up Krone's dental mold to a mold of the bite wounds on Kim's breast.

Police also seized four pairs of shoes from Krone's house. They were all either a size 11 or a size 11 . The handling of the shoeprint evidence by police investigators raised a number of questions. Detective Olsen, who was in charge of collecting shoeprint evidence at the crime scene, reported Converse shoe prints in a size 9 to 10. But the numbers were just a guess – he used no measuring device. Police were able to eliminate other possible sources of the shoeprints – the cooks at the CBS Lounge, the owner, a repairman, police investigators. Although none of Krone's shoes seized by police matched the crime scene footprints, that fact was far from conclusive of his innocence. The State downplayed the shoeprint evidence at trial, insisting that there was no way to be sure whether the footprints at the CBS Lounge were even related to the murder. They stated that no photographs at trial showed the proximity of the shoe prints to the crime scene. But as Krone's lawyers would later demonstrate through enhanced photographic analysis, there was clear evidence connecting the Converse shoe prints to the murder. And, as it turns out, Ray Krone's feet would not have fit – or at least not fit comfortably-- in the shoes that left those prints at the murder scene.

On the subject of DNA evidence, the State was left to argue simply that a biological mixture from the murder scene was consistent with a mix of Krone and Kim's DNA. The Defense attacked the credentials, the statistical techniques, and the conclusions of the State's expert, but at the time did not have any smoking gun evidence of innocence. During cross-examination, the State's expert admitted that his tests had found that the DNA on Kim's jeans and tank top, as well as the sperm evidence, could not have come from Krone. In addition, DNA on Kim's jeans was identified as male DNA from a single unknown donor, and some DNA from Kim's bra positively excluded Krone as the source. Yet the State was able to explain away these findings by arguments that Kim was found in a public restroom, had been tending bar earlier, and may have gotten bits of DNA on her from a customer's spittle during conversation, from the crime scene floor, or from an empty beer bottle earlier in the evening.

Also during the second trial, evidence came to light pointing to a possible unknown suspect, an American Indian man. Various bits of evidence lent credence to this theory that police had the wrong guy. The State, of course, successfully downplayed the significance of this evidence. And so a jury of his peers once again found Krone guilty of murder. Maricopa County Superior Court Judge James McDougall, in view of his own residual doubts about Krone's guilt, sentenced Krone to life in prison rather than death. The decision weighed heavily on Judge McDougall, who remarked that "This is one of those cases that will haunt me for the rest of my life – whether I did the right thing."

As Krone went off to serve a life sentence, his lawyers and his family did not give up. His parents took out a mortgage on their home to pay for Ray's private legal fees. A Phoenix lawyer named Alan Simpson joined Krone's legal team after the second trial. In 2001, Simpson filed an application for DNA testing of biological evidence that had been preserved from the murder scene, and had been found on Kim's clothes, a beer bottle and glass, and a substance on the men's room floor. A year later, Simpson received the results of the DNA tests from the Phoenix Police Department's Crime Lab. The DNA results all excluded Ray Krone. And when the results were run through the FBI's DNA database, they were found to match the DNA profile of a man named Kenneth Phillips, an American Indian who was already incarcerated for an unrelated crime of sexual assault. At the time of Kim's murder, Kenneth Phillips had been living just a couple of blocks away from the CBS Lounge.

On Friday, April 5, 2002, based on the overwhelming weight of new-found evidence of his innocence, Ray Krone's defense team asked for his release. The request was denied. But on the following Monday, the State independently moved for Ray Krone's release. That day, Ray Krone walked out of a Yuma prison, but was still subject to his conviction.

More tests were run on the remaining evidence. Blood from Kim's jeans pocket and underwear was found to have come from Kenneth Phillips. Fingerprints found at the murder scene, previously ruled by police to be irrelevant to the crime, were found to match Kenneth Phillips, who had evidently leaned against the condom machine and inside of the men's room door while attacking and killing Kim. On April 29th 2004, Ray Krone's conviction was thrown out and the case against him dismissed.

What Went Wrong: A Post-Mortem

The goal of a post-mortem analysis is to try to learn and pass on the lessons of such a tragic case. We have identified several areas for further investigation that we will discuss here briefly. In reviewing these facts that, in retrospect, could have led police more quickly to the actual killer, we reflect on some of the many missed clues and dropped leads, and try to better understand why they occurred.

A common theme in this case is what has been called target fixation – investigators who begin to focus on a particular suspect tend to view the emerging evidence in light of that suspicion. Seemingly innocent facts come to take on a sinister light, while potentially exculpatory facts are discounted as irrelevant, or are too quickly explained away.

For example, a critical lead was dropped by police. The day of Kim's murder, police were stationed outside to protect the crime scene. That night Officer Kurtenbach was on duty to guard the area. As he stood guard, an unknown white male, wearing a hooded sweatshirt, approached the crime scene near the adjacent shoe store. As he neared, the man stopped, attracted the attention of Officer Kurtenbach, dropped an envelope on the ground, and ran away from the scene. Kurtenbach did not touch the envelope; he immediately contacted his superior at the scene, Sgt. Givens, who opened the note. Sgt. Givens then passed the note to Detective Gregory. The note gave police a description of the murder who had been lurking behind the bar the night of the murder.

Now, undoubtedly police receive a lot of false leads from notes such as this. But the circumstances of the delivery of this note were such that most of you would probably agree it should have been taken very seriously. At the least, police might have canvassed the area to search for the author. Had they searched the area, investigators would have discovered this: The back door of the CBS Lounge is visible from only a handful of apartments directly behind the bar. Had they checked those apartments, they might have found the author of the mysterious note, Robert Fredrickson, who lived right there. Had they interviewed Mr. Fredrickson, police presumably would have learned that what Mr. Fredrickson saw that night that was so important for him to risk his own arrest in coming forward to notify police, was a murderer stalking his prey at or near the time of the killing. Had they followed up on leads to a possible American Indian suspect, they would have found potentially significant the following facts: a report that, on the night that she was killed, Kim Ancona had cut off a Native American customer who left intoxicated, a report that another bar customer saw an Indian male at the CBS Lounge at the time of closing, a hair found at the crime scene was American Indian in origin and that the police crime lab viewed as irrelevant and did not analyze.

Yet it appears that this note played no significant role in the police investigation of Kim's murder. It was put in a desk drawer and not impounded into evidence until weeks later. Perhaps police believed they already had their man – and would not allow themselves to be led astray by evidence pointing to a different suspect.

Additionally, seventeen 'single' hairs were found on Kim Ancona's body. They were labeled A through Q. Dr. Scott Piette, the state criminologist, observed that the head and pubic hairs of Kim and Krone appeared indistinguishable. Thus, Ray Krone could not be eliminated as a donor of these hairs. However, two hairs, N and O, were later discovered to be dissimilar to both Krone's and Kim's hair, and therefore signaled the presence of someone else at the crime scene. Hair Q was never tested and it was finally revealed as being American Indian in origin. The most striking thing about this hair Q – was its location. All the other hairs found on Kim were found on her back and torso, making it possible that the hairs were picked up off the restroom floor. Hair Q, however, was discovered among the mass of congealed blood in Ancona's left buttock crease. You would be hard pressed to find an expert at any price who would conclude that a hair in such a position could be unrelated to the murder. And yet, either because of inexperience, poor supervision, and bad-luck coincidence -- or because this hair obviously did not "fit" the emerging evidence pointing falsely to Ray Krone's guilt – the Phoenix police lab simply failed to analyze this hair. Again, the evidence pointing to the real killer was available from the start.

Finally, the most obvious errors in this case came from reliance on what you might call "junk science" – the controversial field of forensic odontology or bite-mark science. This case makes clear that juries place tremendous – and sometimes unwarranted – weight on so-called scientific evidence. There is no substitute for a persuasive expert, and there is no substitute for the critical role that judges must play as the gatekeepers to preclude junk science from getting to the jury. To this day, bite-mark science has still not been subjected to the sort of rigorous peer review and testing that is expected of other forensic sciences. We could all use a healthy dose of skepticism when relying on so-called science as the basis of proof beyond a reasonable doubt – especially in a case of life and death.

Conclusion

The Ray Krone case is a reminder to us all just how much hangs in the balance of our criminal justice system, and just how easily so many well-meaning people can simply get it wrong. In a sense, Krone was lucky – there was enough DNA evidence remaining from the crime scene that he eventually could be exonerated thanks to advances in DNA technology. Who knows how many other innocent men and women still remain behind bars because they are not equally fortunate in their ability to prove their innocence. In another sense, of course, Ray Krone is an American tragedy, a man who lost over ten years of his life to jail and prison. Those of us who care about the criminal justice system owe it to people like Ray Krone to study, learn and disseminate the lessons of his wrongful conviction in the hopes that this will never happen again.

Ray Krone Visits Arizona

In May, the Arizona Justice Project was honored to have Ray Krone as our guest at a Justice Project sponsored CLE event on wrongful convictions. Ray Krone exemplifies the need for organizations such as the Arizona Justice Project. His visit was invigorating and a constant reminder of how a justice system can fail an innocent man.

We look forward to another great Arizona Justice Project sponsored event this Fall and hope you will join us.

justice fellows program



The Arizona Justice Project is proud to announce our remarkable Justice Fellows Program. At a time when the country is reenergized and hopeful for change, we can do our part to make sure this change extends to the legal system and to those whose lives are forever changed by a wrongful conviction or manifest injustice. Everything we do together, with your support, allows us to extend our services that much further. Please join us in supporting this important work by becoming a Justice Fellow, at the level of your choice. We are trying hard to do something important about criminal justice in Arizona, and we need your help.

In fact, your help is needed now more than ever before. For the last six years, most of our operating budget has come from grants we received from the Arizona Foundation for Legal Services and Education. These grants, funded through the IOLTA program, allowed us to continue to serve the unmet needs of the wrongfully convicted. This year the Justice Project did not receive any Foundation grant money due to the shortfall in IOLTA funds and the decreased rate of return on those accounts. This lack of anticipated funding puts the Justice Project in the position of having to join the ranks of many other projects and seek funds from those in our community who share our commitment to serve justice. By becoming a Justice Fellow, you can help us continue to expand this important work.

If you cannot donate financially, please consider donating your legal skills or in-kind services to help us reach our goals. These can include, but are not limited to, marketing support, printing, research, investigation skills, clerical and event support, office supplies and furniture.

The Justice Project would like to give a special thank you to our current Justice Fellows for their contributions. We are honored to have such esteemed members of our community showing their support. The Project's mission and continued efforts would not be possible without the encouragement and contributions of our Justice Fellows

If you are interested in becoming a Justice Fellow, please call or email the Justice Project at info@azjusticeproject.org or (480)727-0009.

Your contribution is a tax deductible contribution.

thank you to our **current justice fellows:**

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a **quote** from **Justice Fellow, Greg Kuykendall**

Donating time and money to the Justice Project has been an extremely worthwhile experience for my associates and me. In working with the Justice Project we have not only gained a great deal of technical legal knowledge and been exposed to super lawyering, we've also been shown the heart-wrenching human toll that comes from really extraordinary injustice.

Since 2002 my firm and I have represented in state and federal court an indigent black man serving a life sentence who made the mistake of cooperating with a rogue and since-disbarred prosecutor. When that prosecutor failed to win a conviction against the triggerman in the murder case, he waited 14 months, conducted no new investigation, then prosecuted my unfortunate client in retaliation

for failing to appear at the triggerman's trial. In 2008 a federal judge granted discovery and an evidentiary hearing to determine whether the prosecutor was indeed practicing vindictive prosecution, and that hearing will take place later this year.

Arizona's sordid and decrepit custom of long-term incarceration for the unlucky many combined with a grossly underfunded system for investigating post-conviction cases has combined to make our justice and prison systems absolutely shameful. In my view, it is only through full-throated support of the Justice Project that there can be any hope of routinely exposing Arizona's ugly underbelly. The Project's volunteers and partners meticulously and stubbornly demand review of the injustices that habitually occur here.

we need **your help**



The Arizona Justice Project is actively seeking corporate/business and personal donations - and **we NEED YOUR HELP!** The Arizona Justice Project is a non-profit organization with very limited resources and funding. We primarily rely on donations. In order to continue our efforts in correcting legal injustices and achieve success in the standards expected by the legal community, we require donations from many outside sources. We are asking for your assistance in obtaining donations in the following areas:

Personal charitable contributions

Corporate/Business charitable contributions

Donated products, gift certificates, and services for our fundraisers

The success of the Arizona Justice Project comes from uniting as a community to correct the injustices in our legal system. We cannot do it without you! Please join us in these efforts and talk to everyone you know! Your support is definitely needed and invaluable.

To make a donation, please

(1) mail your donation to: Arizona Justice Project, Sandra Day O Connor College of Law, P.O. Box 877906, Tempe, AZ 85287-7906, or

(2) make a donation online at azjusticeproject.org. You may also contact us at (480)727-0009.

With gratitude,

The Arizona Justice Project