

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Kevin Walker — PETITIONER
(Your Name)

vs.

People of The State of Illinois RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ILLINOIS SUPREME COURT

The [REDACTED]
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Walker
(Your Name)

P.O. box 112
(Address)

JOLIET, ILLINOIS 60434
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

Petitioner Ask that this Honorable Court:

- 1) Clarify whether de novo Review is the applicable standard when reviewing whether a party has laid adequate foundation to admit expert testimony;
- 2) Clarify whether the lack of a specific basis for an expert's opinion goes to the admissibility, and not the weight, of the evidence.

The issue at hand was whether the Appellate Court should have Review de novo Kevin Walker's argument whether the testimony of the State Firearms Identification expert should have been excluded because he did not provide an adequate foundation for his opinion about the ballistics evidence recovered in the case.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. -- A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

- ☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

- ☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

- ☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the STATE Appellate Court First District court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. People V. WAIKER 2017 IL App (1st) 141036-U

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was N/A.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

N/A

☒ For cases from state courts:

The date on which the highest state court decided my case was 9/27/2017.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TABLE OF AUTHORITIES CITED

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STATEMENT OF THE CASE

ON October 16, 2009, The STATE Charged defendant AND his Co-defendants SHAWN GASTON and Christopher Harris who are NOT Parties to this Appeal with first degree Murder of Chicago Police officer Alejandro Valadez and attempted first degree Murder of Kelvin Thomas. Following a Seperate Jury Trial ON the Above Mentioned Charges defendant WAS found guilty and sentenced TO 120 years imprisonment.

A Timely Notice of Appeal followed and was docketed as 09CR16847(02) Appeal No. 1-14-1036 People v. Kevin Walker. No Rehearing was filed after Appellate Court affirmed the TRIAL Courts Ruling ON 6/20/17.

PETITIONER Sought Leave TO APPEAL TO the Illinois Supreme Court which WAS docketed under NO. 122430. WHICH ON OR ABOUT 9/27/2017 the Illinois Supreme Court denied discretionary Review. WHICH NOW PETITIONER APPEAL FOLLOWS.

Prior to trial, defendant Moved in limine to bar Justin Barr, the state's firearms expert, from testifying that the bullets recovered from the body of officer Valadez were fired from a weapon recovered from the trunk of the car that defendant had been driving. Defendant Argued that Barr would NOT be able to lay an adequate foundation for his opinions. The state responded that Barr had testified in Gaston's jury trial defendant's Co-defendant and had fully explained his methodology and the basis for his opinions, AND further stated that the defense Counsel could interview Barr. The Circuit Court denied defendant's motion in limine, finding Barr's testimony WAS admissible.

THE STATE Called Justin Barr, a Forensic Scientist, to testify As AN EXPERT in the field of firearms Identification. Defendant expressly Accepted Barr As an expert in that field. Barr explained that the basis for a Positive Firearm identification is substantial agreement of Class Characteristics and individual Characteristics. Firearm Class Characteristics are those that are included or excluded from a Particular group or class of firearms, and are determined Prior to and reflected in the manufacture of the firearm. Cartridge casing class characteristics include the Caliber, breech face marks, and firing pin impressions. Class Characteristics of a firearm include the Caliber, Number of lands and grooves

grooves, and the direction of twist. Lands and Grooves are the raised and recessed portions, respectively, inside the barrel of a firearm, also known as rifling. Land and grooves have a particular direction that cause a bullet to spin, and the spin provides stability as the bullet exits the barrel. Barr explained that, in firearm identifications, individual characteristics are the irregularities or imperfections and markings left during the manufacturing process or due to wear and tear or abuse. He explained that when a gun is fired, the firing pin strikes the primer area of a cartridge, causing the primer to ignite and forcing the bullet down the barrel of the firearm. The expansion of gasses cause the breech face to leave impressions on the cartridge, while the firing pin leaves an identification on the primer area of the cartridge.

Barr explained that performing a firearm forensic identification involves the use of a comparison microscope, which allows two pieces of evidence to be viewed at the same time. Using the comparison microscope, a forensic scientist can, for example, look for class characteristics and individual characteristics in the firing pin impressions between two pieces of evidence. Furthermore, Barr explained that testing a firearm involves firing the gun into a water recovery tank, which allows for recovery of both a test-fired bullet and its cartridge casing if the casing is ejected from the weapon during firing.

Barr testified that he examined and test-fired the revolver recovered from the trunk of Gaston's car using both .38 special ammunition and .357 Magnum ammunition. He used the comparison microscope to compare the test-fired bullets from the .357 Colt Revolver to the ~~bullets~~ recovered from Officer Valadez. Barr testified that he used all proper procedures and protocols in performing his tests and in using the comparison microscope, and that the tests he employed are commonly accepted in forensic firearm identification for determining whether spent firearms evidence was fired from a particular weapon. He stated that the class characteristics of a 357 Magnum Colt Revolver reflected on the test-fired bullets and the recovered bullets consisted of matching calibers and six lands and grooves with a left-hand twist. He concluded that there was substantial agreement of class and individual characteristics between the test-fired bullets and the recovered bullets. Over defendant's objection, Barr opined that the bullets recovered from Officer Valadez's body were fired from the 357 Colt Revolver recovered from the trunk of Gaston's car. Furthermore, following all proper procedures and protocols that are commonly accepted in his field, Barr compared the five cartridge casings recovered from 357 Colt Revolver to the cartridge casings from the test-fired shots using the comparison microscope to compare. Over defendant's objection, Barr opined that based on his training and individual examination of the class and individual characteristics, the five fired cartridge casings recovered from the 357 Colt Revolver had been fired by that weapon.

Barr also examined and tested the 40 caliber semiautomatic pistol and the empty clip recovered from the trunk of Gaston's car. He test-fired the pistol into the water tank using the recovered empty clip. Using the comparison microscope, he compared the test-fired bullets and cartridge casings to 40 caliber cartridge casings recovered from the

Scene of the shooting and the single Cartridge Casings recovered from Gaston's CAR. BARR testified that he followed all proper Procedures and Protocols that are Commonly accepted in his field, and over defendant's objection testified that he found Substantial similarities between the test-fired 40 Caliber Cartridge Casings and the eight 40 Caliber Cartridge Casings recovered from the Scene of the shooting and the single .40 Caliber Cartridge Casing recovered from Gaston's CAR. He opined that the eight Cartridge Casings recovered from the Scene of the shooting and the single .40 Caliber Cartridge Casing recovered from Gaston's CAR were fired from the 40 Caliber Semi-automatic Pistol recovered from the trunk of Gaston's CAR.

After BARR's direct examination, defendant moved to strike BARR's opinion for lack of an adequate foundation, which the Circuit Court denied. Defendant then cross-examined BARR regarding his methodology and opinions. BARR stated his opinion that there was substantial Agreement of the individual Characteristics between (1) the bullets recovered from Officer Valadez and the test-fired bullets from the 357 Colt Revolver recovered trunk of Gaston's CAR, (2) the Cartridge Casings recovered from the 357 Colt Revolver and the test-fired Cartridge Casings fired from 357 Colt Revolver, and (3) the 40 Caliber Cartridge Casings recovered from Scene and the 40 Caliber Cartridge Casings from the test-fired 40 Caliber Pistol recovered from the trunk of Gaston's CAR, was based on his training and expertise. He admitted that he did not take any notes about his observations while making his comparisons, and acknowledged that he did not "Count Items", such as the striations on the bullets, which are individual Markings left on a bullet from the lands and grooves in the barrel of a firearm. He testified that there "is no minimum standard at the lab in the amount of similarities that you have to have before you can make any sort of identification."

REASONS FOR GRANTING THE PETITION

This Court should grant this petition because in the matter at hand the Illinois Appellate Courts are clearly in conflict regarding which standard of review applies when determining whether a party has laid an adequate foundation to admit expert opinion testimony; and whether the lack of a specific basis for an expert's opinion goes to the admissibility, and not the weight of the evidence.

The Appellate Courts decision was erroneous because it's simply reinforcing the fact that ballistic expert Justin Barr testified that "he followed all proper procedures and protocols commonly used in the firearms identification field," and that Barr provided detailed testimony about the basis for his opinion to support that an adequate foundation was laid for Barr's opinion about the bullets and cartridge cases recovered in the case were fired from two weapons found in a vehicle allegedly driven by the petitioner during the offense.

But Barr never provided an evidentiary basis for his opinion to the appellate court would maintain, which failure to do so provides support that the state did not lay an adequate foundation for his subjective opinion. When during defense cross-examination Barr explained that his opinion was "based on a substantial agreement of class characteristics" yet he did not provide a factual basis for his conclusion that there was a "substantial agreement" of the individual characteristics. Rather, he explained during cross-examination, that his determination was "based on his training and experience" and on the "overall pattern that were looking at." which his testimony did not contain specific detail about how he reached his conclusions regarding the ballistics evidence in this case and is simply inadequate. Thus his testimony should have excluded.

Further more, Barr testified that he did not take any notes about his observations while making comparisons, and acknowledged that he did not "count items," such as the striations on the bullets which are individual markings left on a bullet from lands and grooves in the barrel of a firearm. He testified there "is no minimum standard at the lab in the amount of similarities that you have to have before you can make any sort of identification." which Barr acknowledged that he did not count the number of similarities and that he did not take any notes documenting his observations, further more proving Barr's testimony should have been excluded because the state did not lay an adequate foundation for his subjective opinion linking bullets and cartridge cases recovered in the case were fired from two

Weapons found in the vehicle allegedly driven by the petitioner during the offense.

The National Importance of having the Supreme Court decide the question at hand. Is that expert testimony in Criminal proceedings is extremely important in accessing Scientific Methods and Studies. When there Knowledge and training is being used in Criminal Cases to either Connect or disprove evidence linking an offender to a Crime. Which in Criminal Cases experts are highly relied on by the prosecution and defense in Criminal Cases. Which in technical terms experts are "witnesses" in Criminal Cases and there Assessment of there Work-product is used as evidence for the jury or judge to Access and weigh as factors in Potential Convictions or acquittals of a defendant in a Criminal Case. So deciding which standard of review applies when determining whether a party has laid an adequate foundation to admit expert opinion testimony; and whether the lack of a specific basis for an expert's opinion goes to the admissibility, and not the weight of the evidence. Which is important because it is impossible for a jury to fairly weigh the evidence since it is not provided with any information as to how an expert reached there Specific opinion which foundational requirements are, in fact, akin to the personal Knowledge requirement, where in both instances, it ensures that the testimony is trustworthy and reliable, and provides the jury with an underlying basis crediting the witness testimony. Which not only effects my case but others in similar situations because as people we have an equal right under the United States Constitution to due process and equal protection, not only to face our accusers under the 6th Amendment but also a right to have a fair and impartial trial under due process and 14th Amendment. And such decision will effect not only my case but many others in similar situations or in the near future because it will ultimately decide how expert testimony is considered - admissible and reliable as evidence in Criminal Cases and what is a proper standard to consider whether an adequate foundation has been laid to allow an experts opinion as evidence in a Criminal Case. And the Science behind toolmark and firearms analysis has been widely criticized for years See. Legal and Scientific evaluation of forensic Science 33 seton Hall L. Rev. 1167, (2003) National Research Council, National Academy of Sciences, strengthening Forensic Science in the United States: A Path Forward (2009), Pg 155 (A fundamental problem with toolmark and firearms analysis is the lack of a precisely defined process). Which this decision as shown will not only effect me, people in similar situation and the near future but also the science behind an experts work so it's a very important decision that I'm requesting the Court to not only Review but to also grant me relief in this matter.

The reason the decision of the Appellate Courts are in conflict with other courts is because they are mixed on whether a party has laid an adequate foundation for an expert's opinion is a question of law should be reviewed de novo or an abuse of discretion. The defendant relied on *People v. Safford* 392 Ill. App. 3d 212, 221-22 (2009), *People v. Paultain* 2016 IL App 131474 964, *People v. Burhans*, 2016 IL App (3d) 140462 930 and a long line of other cases which holds that de novo review should be applied when determining whether an adequate foundation for expert opinion testimony has been laid. Despite a long line of cases the court at hand held and declined to apply de novo review and instead, relying on *People v. Simmons* 2016 IL App (1st) 131300, ¶109 (collecting cases) which held that an abuse of discretion is the proper standard to apply.

The Appellate Court held *People v. Simmons* 2016 IL App (1st) 131300, ¶109, is a better reasoned decision with respect to the standard of review (collecting cases) and that cases on which Safford relied did not support its conclusion that review of whether an adequate foundation exists is question of law. Also stating "An expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires & otherwise, the expert may in any event be required to disclose the underlying facts or data on 'cross-examination'." Ill. R. Evid. 705 (eff. Jan 1, 2011). "Rule 705 permits an expert to give an opinion without divulging the basis for it and shifts the burden to the opposing party to elicit and to explore the underlying facts or data on cross-examination,

The basis for an expert's opinion generally does not affect his standing as an expert, but instead goes to the weight of the evidence, which is for the jury to determine in light of the expert's credentials and the factual basis for his opinion, *Simmons*, 2016 IL App (1st) 131300, ¶121; *Snelson v. Kamm*, 204 Ill.2d 1, 26-27 (2003).

But contrary to the Appellate Courts position in *People v. Simmons* 2016 IL App (1st) 131300 ¶108 Both the state and defendant agreed that the case should be reviewed de novo because the issue presents a question of law. Also *People v. Lovejoy* 235 Ill.2d 97 141-42, 919 NE2d 843 (2009) held typically a abuse of discretion would apply to admission of experts testimony about toxicology report he did not perform but applying de novo where defendant claimed violation of Sixth Amendment Confrontation right.

Which *People v. Safford* supports the petitioner's position contrary to the Appellate Courts position. yet the state argued petitioner's argument must be rejected in light of *People v. Simmons* 2016 which held that *People v. Safford*, the case that provided the basis for the now-

WITHDRAWN OPINION IN JONES 2015 FL APP (1st) 121016 WAS INCORRECTLY DECIDED AND AN "OUTLIE". THE STATE CLAIMS THAT LIKE THE DEFENDANT IN SIMMONS, PETITIONER'S ATTACK ON BARR'S TESTIMONY RELATES TO THE WEIGHT OF THAT TESTIMONY, NOT TO ITS ADMISSIBILITY. YET BEFORE A JURY COULD ASSESS THE WEIGHT AND CREDIBILITY OF BARR'S OPINION, IT WAS INCUMBENT ON THE TRIAL COURT TO DETERMINE WHETHER THE FOUNDATIONAL REQUIREMENTS HAD BEEN MET FOR THE ADMISSION OF HIS OPINION. THOSE REQUIREMENTS WERE NOT MET WHERE BARR FAILED TO PROVIDE A FACTUAL BASIS FOR HOW HE REACHED HIS CONCLUSIONS ABOUT THE FIREARMS EVIDENCE. AS A CONSEQUENCE, IT'S IMPOSSIBLE FOR A JURY TO FAIRLY WEIGH THE EVIDENCE SINCE THEY WERE NOT PROVIDED WITH ANY INFORMATION AS TO HOW BARR REACHED HIS SPECIFIC OPINION IN THE MATTER. WHICH FOUNDATIONAL REQUIREMENTS ARE AKIN TO THE PERSONAL KNOWLEDGE REQUIREMENT, WHERE IN BOTH INSTANCES, IT ENSURES THAT THE TESTIMONY IS TRUSTWORTHY AND RELIABLE, PROVIDING THE JURY WITH AN UNDERLYING BASIS FOR CREDITING THE WITNESS TESTIMONY. SEE PEOPLE V. SIMPSON 2015 FL 116512 932 (THE PERSONAL KNOWLEDGE REQUIREMENT "IS DESIGNED TO ENSURE THAT OUT OF COURT STATEMENTS ARE TRUSTWORTHY").

IN CONCLUDING THAT THIS ISSUE GOES TO THE WEIGHT OF THE EVIDENCE AND NOT ITS ADMISSIBILITY, SIMMONS RELIED ON PEOPLE V. O'NEAL 418 ILL. APP 2D 116 (1ST DIST 1969) AND UNITED STATES V. BASTANIPOUR, 692 F.2D 170 (7TH CIR 1982) O'NEAL TESTIFIED TO THE PROCEDURE GENERALLY USED AND TO THE REASON WHY A COMPARISON OF BULLETS WILL REVEAL THE IDENTITY OF THE GUN WHICH FIRED THEM. THE REVIEWING COURT HELD THE WITNESS SET FORTH REASONS FOR HIS CONCLUSIONS. FD. AT 123-124. IN CONTRAST TO O'NEAL, BARR DID NOT LAY AN ADEQUATE FACTUAL FOUNDATION FOR HIS OPINION WHICH HE CLAIMED HIS OPINION WAS BASED ON HIS "TRAINING AND PERSONAL EXPERIENCE" WHICH BARR CONCEDED HE DID NOT TAKE NOTES ON THE TYPE OF INDIVIDUAL CHARACTERISTICS HE OBSERVED WHEN MAKING A COMPARISON AND DID NOT "COUNT ITEMS" SUCH AS STRATIONS, WHICH ARE THE INDIVIDUAL MARKINGS THAT ARE NOTED ON A FIRED BULLET. WHICH MAKES O'NEAL DISTINGUISHABLE BECAUSE BARR DID NOT PROVIDE AN ADEQUATE FACTUAL BASIS FOR HIS OPINION.

THEN SIMMONS ALSO RELIED ON BASTANIPOUR, WHERE DEFENDANT ARGUED HE WAS PREVENTED FROM CONDUCTING A MEANINGFUL CROSS-EXAMINATION OF A FORENSIC CHEMIST WHO OPINED THAT THE SUBSTANCE AT ISSUE WAS HEROIN YET HE COULD NOT RECALL THE LITERATURE SPECTRA UPON WHICH HE BASED HIS ANALYSIS AND THAT HE LOST OR DESTROYED THE "STANDARD SPECTRA" WHICH HE COMPARED AGAINST THE "LITERATURE SPECTRA". AND THE COURT CONCLUDED DEFENDANT WAS NOT RESTRICTED IN HIS CROSS-EXAMINATION AS DEFENCE WAS ABLE TO ATTACK THE WEIGHT OF THE EXPERTS OPINION BY SHOWING HIS FAILURE TO RETAIN CERTAIN MATERIALS OR INFORMATION RELATING TO LAB TEST, WHICH AGAIN IS DISTINGUISHABLE BECAUSE PETITIONER CHALLENGED BARR'S TESTIMONY ON FOUNDATIONAL GROUNDS. AND BASTANIPOUR DID NOT SPECIFICALLY ADDRESS THE QUESTION OF WHETHER THERE WAS AN ADEQUATE FOUNDATION TO ADMIT THE EXPERTS OPINION TESTIMONY. MORE OVER, TO THE EXTENT BASTANIPOUR HAS ANY SIMILARITIES TO THIS MATTER, IT'S A FEDERAL COURT OPINION, WHICH IS NOT BINDING ON THIS COURT. SEE PEOPLE V. KOZLOWSKI, 278 ILL. APP 3D 40, 45-46 (2ND DIST 1996) (FEDERAL COURTS EXERCISE NO APPELLATE JURISDICTION OVER STATE COURTS; THEREFORE, DECISION OF THE LOWER FEDERAL COURT ARE NOT BINDING ON STATE COURTS).

THE COURT'S DECISION IN PETITIONER'S CASE EFFECTIVELY ALLOWS AN EXPERT TO TELL THE JURY TO "TRUST ME" AND "TAKE MY WORD FOR IT". HOWEVER COURTS ARE NOT TO "BIND" TO ACCEPT THE EXPERT'S ASSERTIONS THAT HIS TESTIMONY HAS AN ADEQUATE FOUNDATION. V. GAYTAN, 313 ILL. APP 3D 137, 147 (2ND DIST 2000) RATHER, THEY MUST LOOK "BEHIND THE

expert's Conclusion" to determine if the methods leading to that Conclusion are founded in reliable evidence and inference. "An expert's opinion is only as valid as the bases and reasons for his opinion. Soto, 313 Ill. App 3d at 146. This is especially true where, as here, forensic testing of the evidence at issue - ballistics - has come under heightened scrutiny in recent years.

Next, the appellate Court in Walker observed that defense Counsel was allowed to thoroughly cross-examine Barr at trial regarding his opinions and how he reached them. Walker, 2017 IL App (1st) 141036-U 934, yet where no explanation is provided for how the expert reached for how the expert reached his opinion, the defendant is deprived of making a meaningful challenge to the expert's Conclusion. This was explained in Safford: "our problem with the expert testimony here is that the expert claimed to base his opinion upon facts personally known to him, but he was unable to testify to those facts. That rigorous cross-examination occurred as to the absence of details is hardly an adequate test of the substance of the expert's opinion." Safford, 392 Ill. App 3d at 227. An expert must give some reasons for his opinion, as an expert's opinion is only valid as the basis and reason for the opinion." People v. Wright, 2012 IL App (1st) 073106, ¶127. Testifying to the method of examination used and what the expert is looking for, as Barr did below, only establishes what the expert did, but it does not provide any information as to what the expert actually found and gives no information for the bases for the expert's ultimate opinion.

Finally, despite the Court's attack on Safford it's clearly established that no case law has been presented that ultimately would vacate such ruling. and it's been established that petitioner argues that this issue should be reviewed de novo citing People v. Safford, 392 Ill. App 3d 212, 221-22 (2009) and People v. Chapman 194 Ill. 2d 186, 217 (2000) and the state responded that an abuse of discretion standard applies as held by Court in Simmons 2016 IL App (1st) 131300 ¶108-114). Under either standard this Court should find error because the state did not lay an adequate factual foundation to admit Barr's opinion testimony. And it should further hold that the error was not harmless where Barr's testimony provided the crucial link between Walker and the weapons used during the offense, and in its absence, the other properly admitted evidence does not overwhelmingly support his convictions and due to these crucial conflicts between the appellate Courts on this matter petitioner ask to grant this petition to clarify which standard should apply when determining whether a party has laid an adequate foundation to admit expert opinion testimony, and whether the lack of a specific basis for an expert's opinion goes to the admissibility, and not the weight, of the evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin Walker

Date: 12-26-2017
