

21-6242

No.

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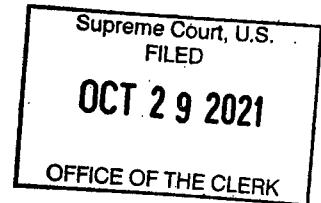
SUPREME COURT OF THE UNITED STATES

SHELLY MARGARET ARNDT-PETITIONER

VS.

DEBORAH JO WOFFORD-RESPONDENT

ON PETITION WRIT OF CERTIORARI TO



UNITED STATES OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

SHELLY MARGARET ARNDT

WASHINGTON CORRECTION CENTER FOR WOMEN

9601 BUJACICH RD. N.W.

GIG HARBOR, WA. 98332

QUESTION PRESENTED

When a state court evidentiary ruling impinges on the constitutional rights of a factually innocent person, does the fundamental miscarriage of justice doctrine require this Court to protect the petitioner from unlawful incarceration? This case calls for Supreme Court review to prevent a fundamental miscarriage of justice to one who is factually innocent especially when critical, relevant, reliable, and scientific evidence was wrongfully excluded by the lower court evidentiary ruling.

LIST OF PARTIES

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

RELATED CASES

- *State v Arndt*, No. 48525-7-II, Court of Appeals State of Washington Division II. Judgment entered Dec. 12, 2017.
- *State v Arndt*, No. 48525-7-II, Supreme Court State of Washington. Judgment entered Dec. 5, 2019.
- *State v Arndt*, No. 988820, Court of Appeals State of Washington Division II. Judgment entered Oct. 21, 2020.
- *State v Arndt*, No. 988820, Supreme Court State of Washington. Judgment entered Jan. 12, 2021.
- *Arndt v Wofford*, No. 3:20-cv-05194-RSM-BAT, U.S. District Court for the Western District of Washington. Judgment entered Apr. 5, 2021.
- *Arndt v Wofford*, No. 21-70928, 21-71145, United States Court of Appeals for the Ninth Circuit. Judgment entered July 22, 2021.
- *Arndt v Wofford*, No. 21-70928, 21-71145, United States Court of Appeals for the Ninth Circuit. Judgment entered (pending).

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APPENDIX A- Decision of State Supreme Court denying review.

APPENDIX B- Dissent of Appendix A.

APPENDIX C- Decision of State Court of Appeals.

APPENDIX D- Dissent of Appendix C.

APPENDIX E- Order denying federal review (successive petition).

APPENDIX F- Defense fire expert final report (referenced in Reasons for Granting the Petition).

APPENDIX G- Chart of Bifurcation.

TABLE OF AUTHORITIES CITED

CASES

California v Trombetta, 467 U.S. 479, 485 (1984).

Chambers v Mississippi, 410 U.S. 284, 302 (1973).

McCleskey v Zant, 499 U.S. 467, 489 (1991).

Murray v Currier, 477 U.S. 478, 485-86 (1986).

Schlup v Delo, 513 U.S. 298, 327 (1995).

STATUTES AND RULES

United States Constitution, Amendment 6

United States Constitution, Amendment 14

OTHER

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 _____ to the petition and is

[] reported at _____; 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 _____ to the petition and is

[] reported at _____; 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 A to the petition and is

reported at State v Arndt, 194 Wn.2d 784 Dec 5, 2019; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

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: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was Dec 5, 2019.
A copy of that decision appears at Appendix A.

A timely petition for ^{Reconsideration} rehearing was thereafter denied on the following date: Pending, and a copy of the order denying rehearing appears at Appendix _____.

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

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

STATEMENT OF THE CASE

Petitioner was convicted by jury of first degree arson, first degree premeditated murder, felony murder, and six counts of second degree assault following a jury trial in the Superior Court of the State of Washington in and for Kitsap County. At petitioner's judgment and sentence, petitioner was sentenced to life without possibility of parole.

Arndt appealed, arguing that her Sixth Amendment right to present a defense and her right to be free from double jeopardy were violated. The Court of Appeals for the State of Washington affirmed Arndt's conviction and sentence in an unpublished, divided opinion. *State v Arndt*, 1 Wn. App. 2d 1040, 2017 Wash. App. Lexis 2891, 48525-7-II (Dec. 12, 2017).

The Supreme Court of Washington affirmed the conviction and sentence, concluding that the trial court's ruling limiting the testimony of Arndt's expert witness did not violate Arndt's Sixth Amendment right to present a defense and were well within the court's discretion in a divided opinion. *State v Arndt*, 194 Wn. 2d 784, 2019 Wash. Lexis 758, No. 95396-1 (Dec. 5, 2019).

Arndt filed a Personal Restraint Petition pro se on Feb. 24, 2020 in Washington State Court of Appeals, Division II, No. 988820 arguing the evidentiary ruling infringed on her Sixth and Fourteenth Amendment rights. It was denied on the merits on Oct. 21, 2020.

Arndt filed a Petition of Review in the Supreme Court State of Washington pro se on Dec. 23, 2020 arguing the above. It was denied on the merits on Jan. 12, 2021.

Arndt filed a petition for Writ of Habeas Corpus on Jan. 19, 2021 in the United States District Court for the Western District of Washington. The Report and Recommendation of April 5, 2021 recommended that the petition be transferred to the Court of Appeals for the Ninth Circuit to review as a successive petition. (Arndt's first habeas petition was filed on Dec 8, 2020 on the issue

of Juror Misconduct). The Court of Appeals for the Ninth Circuit denied the successive petition on July 22, 2021, No. 21-71145. Arndt filed a Motion for Reconsideration on August 4, 2021 which is pending at this time this petition was due.

REASONS FOR GRANTING THE PETITION

This case calls for Supreme Court review to prevent a fundamental miscarriage of justice for one who is factually innocent. Ms. Arndt is seeking this Court's review of the State Court opinion on the evidentiary ruling attached as Appendix A.

* Ms. Arndt is not seeking review on Certiorari for the denial of authorization by Court of Appeals to file a successive petition for Writ of Habeas Corpus.

A fundamental miscarriage of justice occurs only when a constitutional violation has probably resulted in the conviction of one who is factually innocent. *See Murray v Carrier*, 477 U.S. 478, 485-86 (1986).

Ms. Arndt claims actual innocence. Her defense fire expert stated:

- "There was no physical evidence whatsoever implicating her involvement with this fire."
- "There was no physical evidence whatsoever that anyone started this fire."
- "There were a number of conditions related to fire origin and spread that may provide physical evidence of an incendiary fire. NONE of these factors were identified in this investigation."

The evidentiary ruling of the lower court prohibited the jury from hearing or seeing this evidence of Ms. Arndt's innocence.

To establish a "fundamental miscarriage of justice" a petitioner must present new reliable evidence-whether it be exculpatory scientific evidence, trustworthy eye-witnesses accounts, or **critical physical evidence - that was not presented at trial.** *Schlup v Delo*, 513 U.S. 298, 327 (1995).

The Supreme Court in *Chambers v Mississippi* held that when evidence is excluded on the basis of a state evidentiary rule, such exclusion may violate due process if the evidence is sufficiently reliable and critical to the defense. *Chambers v Mississippi*, 410 U.S. 284, 302 (1973).

entire appeal and post-conviction process was bifurcated into two separate issues - the evidentiary ruling and juror misconduct - each with their own deadlines.

This resulted in the habeas petition on the evidentiary ruling being deemed successive and not reviewed by any federal court.

Under *McCleskey v Zant*, the “ends of justice” compels a review of this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shelly Margaret Lindt

Date: 28 October, 2021

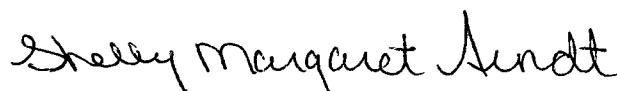
OATH OF PETITIONER

On oath and under penalty of perjury under the laws of the United States of America, I declare that the foregoing is true and correct.

Dated this 28 day of October, 2021.

CERTIFICATE OF MAILING

I certify that I placed the foregoing PETITION FOR WRIT OF CERTIORARI in the prison legal system, per policy on 28 October, 2021.



Shelly Margaret Arndt
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