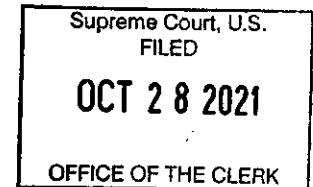


ORIGINAL

21-6259

No.

IN THE  
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

In this case, juror misconduct was proven by the lower court after a juror researched an element of the crime on the internet (Wikipedia) during deliberations. The exact websites and content viewed some 14 months earlier are **unknown** and **unclear**. Therefore, under *Remmer*, how can a lower court rule that the verdict was not affected with this uncertainty in the air? The 4<sup>th</sup> Circuit in *Lawson* and the 9<sup>th</sup> Circuit in *Arndt* concluded differently with this materially indistinguishable fact of the “unknowns.” Therefore, this novel circumstance warrants the exercise of this Court’s discretionary power.

## **LIST OF PARTIES**

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

## **RELATED CASES**

- *State v Arndt*, No. 50118-0-II, Court of Appeals State of Washington Division II. Judgment entered Sept. 25, 2018.
- *State v Arndt*, No. 50118-0-II, Supreme Court State of Washington. Judgment entered Jan. 9, 2019.
- *State v Arndt*, No. 53560-2-II, Court of Appeals State of Washington Division II. Judgment entered Sept. 25, 2019.
- *State v Arndt*, No. 98050-1, Supreme Court State of Washington. Judgment entered April 6, 2020.
- *Arndt v Wofford*, No. 3:20-cv-05958-BHS-JRC, U.S. District Court for the Western District of Washington. Judgment entered Mar. 22, 2021.
- *Arndt v Wofford*, No. 21-35219, United States Court of Appeals for the Ninth Circuit. Judgment entered July 22, 2021.

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APPENDIX A- Report and Recommendation United States District Court.

APPENDIX B- Decision of State Supreme Court denying review.

APPENDIX C- Decision of State Court of Appeals.

APPENDIX D- Dissent from Appendix C.

APPENDIX E- Denying Certificate of Appealability United States Court of Appeals.

## TABLE OF AUTHORITIES CITED

### CASES

*Mattox v United States*, 146 U.S. 140, 149 (1892).

*United States v Lawson*, 677 F. 3d 629 (4<sup>th</sup> Cir. 2012).

### 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 A to the petition and is <sup>2021 U.S. Dist. Lexis 120324</sup>  
 reported at 3:21-cv-05194-RSM-BAT, APR 5, 2021; 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 July 22, 2021.

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: Sept. 15, 2021, 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 \_\_\_\_\_ (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 \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### *United State Constitution, Amendment 6:*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the Witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for the defense.

### *United States Constitution, Amendment 14:*

No state...shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## 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.

In October 2016, while her appeal was pending, Arndt moved for a mistrial after discovering that a Juror (juror #2) had committed misconduct by looking up the term "premeditation" on the internet during deliberations. The Superior Court denied the motion, finding beyond a reasonable doubt that the misconduct could not have affected the verdict.

Arndt appealed the Superior's Court ruling, and Washington State Court of Appeals affirmed the decision over a dissent. See *State v Arndt*, 5 Wn. App. 2d 804 (2018), rev. denied 192 Wn. 2d 1013 (2019). Arndt then filed a Personal Restrain Petition pro se in May 2019 in the State Court of Appeals, again challenging her conviction on the basis of juror #2's Misconduct. The State Court of Appeals dismissed the petition since it had already decided the issue on direct appeal, and the Supreme Court denied review of the matter.

In October 2020, Arndt filed the petition for Writ of Habeas Corpus.

On January 19, 2021, Judge Creatura issued the Report and Recommendation recommending Arndt's petition be denied because Arndt failed to show harmful error. Arndt objected to the Report and Recommendation's conclusion, and respondent Deborah Jo Wofford responded to the objections.

The Report and Recommendation was adopted on March 22, 2021.

Ms. Arndt requested a Certificate of Appealability on March 24, 2021. This was denied September 15, 2021, No. 21-35219.

## REASONS FOR GRANTING THE PETITION

This case is about juror misconduct when a juror conducted internet research on an element of the crime during deliberations. The issues of the “unknowns” in internet research (Wikipedia) is a novel question that the Supreme Court needs to rule on as it will inhere in many cases going forward.

The 4<sup>th</sup> Circuit in *United States v Lawson* granted relief; The 9<sup>th</sup> Circuit in *State v Arndt* did not grant relief with materially similar facts. *United States v Lawson*, 677 F. 3d 629 (4<sup>th</sup> Cir. 2012); *Arndt v Wofford*, 2021 U.S. Dist. Lexis 53572 No. C20-5958 BHS (W.D. Wash., Jan. 19, 2021).

The Supreme Court emphasized long ago that due process does not tolerate “any ground of suspicion that the administration of justice has been interfered with” by external influence. *Mattox v United States*, 146 U.S. 140, 149 (1892).

In *Lawson*, the documents showing what the juror viewed were “recreated” after trial and the court could not determine with certainty what was actually viewed and in *Lawson* a new trial was granted.

In Ms. Arndt’s case, just like in *Lawson*, these “recreated” documents many months after the trial could not conclusively demonstrate what juror #2 viewed that caused her change her vote. Ms. Arndt’s habeas corpus was denied.

In his dissent, Judge Maxa stated “This uncertainty regarding what juror #2 learned from her internet research necessarily precludes the state from establishing beyond a reasonable doubt that her research could not have affected her verdict.”

A search of cases regarding “unknowns” and “juror misconduct” reveals very little case law except in *Lawson* and *Arndt*. Therefore, this lack of agreement between federal circuits needs Supreme Court guidance.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shelly Margaret Lenzt

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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