

DEC 21 2021

OFFICE OF THE CLERK

No.: 21-7856

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM GARRIDO,

Petitioner,

vs.

Provided to Madison C.I. on
1-26-22 for mailing by JW Initials
Date

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

William Garrido
DC No.: M10135
Madison Correctional Institution
382 S.W. MCI Way
Madison, FL 32340-4430

December 21, 2021

ORIGINAL

QUESTION(S) PRESENTED

1. Whether a trial court violates a criminal defendant's constitutional right to due process of law by permitting a prosecutor to introduce previous unreliable and untruthful read-back testimony of a witness that could not be located?

LIST OF PARTIES

[X] 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:

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASON FOR GRANTING THE PETITION.....	6
BY PERMITTING THE PROSECUTOR TO INTRODUCE AN UNTRUE READBACK TESTIMONY THE TRIAL COURT VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW.....	6
CONCLUSION.....	9
PROOF OF SERVICE.....	10

INDEX TO APPENDICES

APPENDIX – A	Order of U.S. Court of Appeal, 11 th Circuit, Denying Certificate of Appealability – August 26, 2021; and Order Denying Motion for Reconsideration – October 5, 2021.
APPENDIX – B	Amended Order of U.S. District Court, Affirming and Adopting Report of Magistrate Judge – April 6, 2021; and Report of Magistrate Judge – July 1, 2020.
APPENDIX – C	Notice of Concealed Weapons Permit, by Fla. Dept. of Agriculture, Division of Licensing – July 9, 2008.
APPENDIX – D	Inmate Management Plan, by Fla. Dep’t of Corr. – July 26, 2021.
APPENDIX – E	Trial Transcript – First Trial (P. 193) Cross of Mr. Brook by Trial Counsel – Mr. McDonald.
APPENDIX – F	Trial Transcript – Second Trial (P. 663) Cross of Mr. Garrido by Trial Counsel – Mr. McElligott.
APPENDIX – G	Trial Transcript – First Trial (P. 193) Cross of Mr. Brook by Trial Counsel – Mr. McDonald.
APPENDIX – H	Trial Transcript – Second Trial (P. 525) Direct Examination of Alan Klein by Trial Counsel – Mr. McElligott.

APPENDIX – I	Trial Transcript – First Trial (P. 193) Cross of Mr. Brook by Trial Counsel – Mr. McDonald.
APPENDIX – J	Trial Transcript – First Trial (p. 179), Direct Examination of Mr. Brook by Prosecutor – Ms. Haney.
APPENDIX – K	Trial Transcript – Second Trial (p. 526), Direct Examination of Alan Klein by Trial Counsel – Mr. McDonald.
APPENDIX – L	Trial Transcript – First Trial (p. 176), Direct Examination of Mr. Brook by Prosecutor – Ms. Haney.
APPENDIX – M	Affidavit of Detective Mario Peña ¶ 8, regarding “Huge C” Company.

TABLE OF AUTHORITIES

State Cases

<i>Clark v. United States</i> , 184 So.3d 1107, 1108 (Fla. 2016)	4
--	---

Florida Statutes

Section 90.804(1)(b), Fla. Stat. (2015)	6
---	---

Federal Court Rules

Fed. R. of Evid. 602 (2015).....	6
----------------------------------	---

Other Authorities

U.S. Const. Amend. V.....	3
U.S. Const. Amend. XIV § 1.....	3

TABLE OF AUTHORITIES

State Cases

<i>Clark v. United States</i> , 184 So.3d 1107, 1108 (Fla. 2016)	4
--	---

Florida Statutes

Section 90.804(1)(b), Fla. Stat. (2015)	6
---	---

Federal Court Rules

Fed. R. of Evid. 602 (2015).....	6
----------------------------------	---

Other Authorities

U.S. Const. Amend. V	3
----------------------------	---

U.S. Const. Amend. XIV § 1.....	3
---------------------------------	---

**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

[X] For cases from federal courts:

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

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

The opinion of the United States district court appears at **Appendix B** to the petition and is

reported at _____; or,
 has been designated for publication but 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 state postconviction 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was October 5, 2021.

[X] 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 _____.
A copy of that highest state 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 writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, in pertinent part, that “No person shall be... deprived of life, liberty, or property, without due process of law...”.

The Fourteenth Amendment of the United States Constitution provides in pertinent part, that “No state shall... deprive any person of life, liberty, or property without due process of law...”.

STATEMENT OF THE CASE

1. On July 3, 2008, Petitioner was charged by information to a single count of Second Degree Murder, in violation of § 782.04, Fla. Stat. (2008).
2. On July 3, 2008, (date of incident), Petitioner was working as a taxi driver, (License No.: 7058) for Central Cab, Tel (305) 532-5555.
3. Petitioner has a concealed weapon permit no.: w2220193 (**Appendix C**).
4. Petitioner had no prior convictions¹.
5. The Petitioner is a peaceful man. Facts: In his thirteen (13) years in prison he had no disciplinary report (**Appendix D**).
6. On December 9, 2009, Garrick Brook, (state star witness), testified and was cross-examined by defense counsel.
7. On December 11, 2009, Petition was found guilty of Second Degree Murder.
8. On January 5, 2015, based on a ruling from the Florida Supreme Court the Petitioner's Judgment and Sentence was vacated and the Petitioner² was granted a new trial.
9. Petitioner's only defense at trial was self-defense.
10. At the conclusion of the second trial on April 10, 2015, the jury returned a verdict finding Petitioner guilty.
11. On May 5, 2015, the trial court sentenced Petitioner to forty (40) years, with a mandatory term of twenty-five (25) years.
12. On September 21, 2017, the Petitioner filed a Motion for Postconviction Relief pursuant to Rule 3.850, Fla. R. Crim. P.
13. On June 15, 2018, the postconviction court summarily denied Petitioner's Motion for Post Conviction Relief pursuant to Rule 3.850, Fla. R. Crim. P.
14. On April 22, 2019, the Petitioner timely filed a Federal Habeas Corpus petition pursuant to 28 U.S.C. § 2254, in the United States District Court for the Southern District of Florida, Miami Division.

¹ Under the Florida Law a guilty plea for a felony for which adjudication was withheld does not qualify as a conviction. See *Clark v. United States*, 184 So.3d 1107, 1108 (Fla. 2016).

² Petitioner is a Certified Law Clerk working for the Fla. Dept. of Corrections.

15. On July 1, 2020, a Report and Recommendation was submitted by the United State Magistrate Lisette M. Reid, wherein she recommended denying Petitioner's Habeas petition.
16. On March 12, 2021, the Petitioner filed "Objections" to the Magistrate's Report.
17. On April 6, 2021, Petitioner's "Objections" were denied through the issuance of an Amended Order affirming and adopting the Report of the Magistrate.
18. On May 10, 2021, Motion for Leave to Appeal was denied in the United States District Court, Miami Division.
19. On April 23, 2021, the Petitioner filed a "Notice of Appeal" seeking review in the United States Court of Appeal for the Eleventh Circuit.
20. On May 31, 2021, Petitioner filed Motion for Permission to Appeal *In forma Pauperis* and Affidavit in the United States Court of Appeals for the Eleventh Circuit.
21. On June 24, 2021, Petitioner filed Certificate Regarding Inmate Account in the United States Court of Appeals for the Eleventh Circuit.
22. On August 26, 2021, Petitioner's Motion for Certificate of Appealability in the United States Court of Appeals was denied.
23. On September 16, 2021, Petitioner filed a Motion to Reconsider, Vacate, or Modify Order Denying a Certificate of Appealability in the United States Court of Appeals for the Eleventh Circuit.
24. On October 5, 2021, Petitioner's Motion for Reconsideration was denied.
25. On December 1, 2021, the Petitioner filed a Petition for Writ of Certiorari in the Supreme Court the United States (this is the actual petition).

REASON FOR GRANTING THE PETITION

**BY PERMITTING THE PROSECUTOR TO INTRODUCE AN UNTRUE
READBACK TESTIMONY THE TRIAL COURT VIOLATED
PETITIONER'S RIGHT TO DUE PROCESS OF LAW.**

Argument and Applicable Law

On January 5, 2015, based on a ruling from the Florida Supreme Court the Petitioner's judgment and sentence was vacated and the Petitioner was granted a new trial.

During the second trial the Prosecutor presented multiple expert witnesses testifying to the nature of the victim's wounds in various expert capacities, but only presented a readback testimony regarding the crucial issue of the facts and circumstances in which the shooting occurred. The trial court violated Petitioner's right to due process of law by failing to determine the competency and admissibility of the readback testimony under exclusionary Rules of Evidence

The introduction of Mr. Brook's untrue readback testimony was based on (hearsay exception; Declarant unavailable), Section 90.804(1)(b), Fla. Stat. (2015). This was a violation of the Fed R. of Evid. 602 (2015).

The law is clear: "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Fed. R. of Evid. 602 (2015).

All the readback testimony is infected with violation and lies; for instance:

1. On cross-examination by Mr. McDonald, pg.193, lines 16-18, Mr. Brook Answered:

QUESTION: So you have no knowledge of what led up to that shot being fired?

ANSWER: No. (Appendix E)

Mr. Brook's readback cannot provide any evidence as to what led up to shooting in this self-defense case. The record reveals that there were numerous incidents of threats, harassments, and assaults upon Petitioner by the victim which has been sufficient to justify the shooting (**Appendix F**).

2. On cross-examination page 193, lines 19-22, by Mr. McDonald, Mr. Brook Answered:

QUESTION: Okay. And you saw a man in what you describe as a shooting stance, but you don't know for sure if he had a gun?

ANSWER: Correct. (**Appendix G**)

However, based on the testimony of the criminalist at the Miami-Dade laboratory, Mr. Alan Klein, there was only gunshot residue on Petitioner's right hand (**Appendix H**).

Evidently, Mr. Brook was lying when he testified as to what he saw. Is not way to shoot on "police stance" and to have gunshot residue only in the right hand.

3. On cross-examination page 193, lines 10-15, by Mr. McDonald, Mr. Brook answered:

QUESTION: The first time you became aware of this is you heard a gunshot and saw a window explode in a car?

ANSWER: Yes.

QUESTION: Okay. And your recollection to that was you ducked?

ANSWER: Correct. (**Appendix I**)

Mr. Brook's readback testimony is not reliable because he admitted that he ducked during the split seconds of the shooting. In a real sense Mr. Brook was no eye witness.

4. On direct examination page 179, Lines 4-10, by Ms. Haney, Mr. Brook answered:

QUESTION: And what if anything did you see when you picked up your head?

ANSWER:

When I picked up my head, I looked towards where the shots were fired. I saw a gentleman running toward me. He seemed like he was running for his life, and I looked toward where, you know, a little further where he was running from, and I saw the gentleman point. (Appendix J)

But based on Criminalist at the Miami-Dade Laboratory, Mr. Alan Klein, Petitioner was a few feet from the victim (Appendix K).

This time Mr. Brook was making a dramatization and was once more lying.

5. On direct examination page 176, lines 9-10, by Ms. Haney, Mr. Brook answered;

QUESTION:

What is it you do for living, Mr. Brook?

ANSWER:

I work with the internet, an internet company. (Appendix L)

However, Detective Mario Pena said: "I also tried to locate the company (Huge C), where Mr. Brook indicated he worked on linkedin , but could not find the company on the Florida Division of Corporation, Sunbiz. At this point, there is no indication if this is a legitimate company (Appendix M), (see Affidavit Section Number 8).

Simply, the Florida Division of Corporations' records do not lie. Mr. Brook was lying when he answered: "I work with the internet, an internet company." Under any reliability test, Mr. Brook's readback testimony falls short and does not pass the test.

Mr. Brook's readback clearly affected the outcome of the proceeding, no doubt prejudicing Petitioner's case due to untrue readback testimony.

One short final note, the 5th Amendment due process clause requires Petitioner not be sentenced on basis of materially untrue assumptions or misinformation.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a Writ of Certiorari issue to review the Order of the United States Court of Appeal for the Eleventh Circuit.

Respectfully submitted,

Wm. Garrido
William Garrido
DC No.: M10135
Madison Correctional Institution
382 S.W. MCI Way
Madison, FL 32340-4430

December 21, 2021