No. 22-6494
SC2-905

ORIGINAL

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

JESSIE RAYNDLE WELCH

Petitioner /Appellant

v.

STATE OF FLORIDA

Respondents / Appellees

AMENDED
PETITION FOR WRIT OF CERTIORARI

Jessie Rayndle Welch(*Pro-Se*)
DC# 470979 / G1-111
Walton Correctional Institution
691 Institution Road
DeFuniak Springs, Fl. 32433

QUESTIONS PRESENTED

1. Should the petitioner be held responsible for counsel's error and prevented from presenting newly discovered evidence for review, that very well could exonerate him from the charges currently in prison over?

2. Has the petitioner's due process Constitutional Rights been violated with the respective State court's denying review. . . After being shown that the Newly Discovered Evidence that could exonerate him, was turned over to the petitioner from F.D.L.E. well after trial and sentencing had been completed and imposed , and was NOT a Brady violation as counsel presented the claim as?

3. When evidence and testimony presented at trial points to the author of the "letter of admissions", (the newly discovered evidence), over the petitioner as being the perpetrator of the crime the petitioner is currently doing time over. . . . Has a manifest injustice been created by denying the petitioner review of the evidence that shows someone other than the petitioner committed the crime currently in prison over that's been prohibited over hired for pay counsel's error?

4. Should the United States Supreme Court be obligated to invoke their discretionary appellate powers to compel the trial court to allow for presentation the "letter of admissions" presented by the F.D.L.E. To the petitioner?

5. In accordance with the determination of the Florida Department Of Law Enforcement, stating that the authenticity of the "letter of admissions" can be validated through "samples" of the other person's handwriting. . . . "Should" an order be issued

compelling the "other person" to submit to a handwriting analysis to analyze whether or not an innocent person has been wrongfully convicted?

6. The petitioner's family hired post conviction counsel to present the "letter of admissions" to the court under the "Newly Discovered Evidence" pretext. The attorney presented the issue as a "Brady Violation", alleging the State had prior knowledge of the existence of the letter. The letter was not received from F.D.L.E. Until the petitioner was already in prison over this conviction. . . . Is it a substantive due process violation prohibiting the petitioner from filing a Belated Rule 3.850 (b)(1) Motion to present evidence that could free an innocent man? APPENDIX-IV.

LIST OF PARTIES

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

Mr. Glenn Swiatek-Appellate Counsel

The Honorable Kelvin Clyde Wells-Trial Judge

The Honorable Alex Alford- Clerk of the Walton County Courts

The Honorable Judge Roberts- First District Court of Appeals

The Honorable Judge M.K. Thomas-First District Court of Appeals

The Honorable Judge Winokur-First District Court of Appeals

The Honorable Kristina Samuels

The Honorable John A. Tomasino

The Honorable Ashley Moody-Attorney General

The Honorable Sharon Traxler-Assistant Attorney General

RELATED CASES

Welch V. State-2022 Fla. LEXIS 1067: Case No.: SC22-905 (July 13 , 2022)

Welch V. State-2022 Fla. App. LEXIS 2298: 2022 WL 906537
(Fla. Dist. Ct. App. 1st Dist. May 29, 2022)

Welch V. State-2022 Fla. App. LEXIS 4398: Case No.: 1D20-1383 (June 7, 2022)

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This petition is being used to seek the a decision from this Court over the decisions rendered by the State Court's denying the ability to present Newly Discovered Evidence that very well could prove the petitioner's innocence. In support of the remedy sought the following decisions and proceedings are presented for review:

APPENDIX–I; Letter allowing Amendment; District Court decision dated March 29th, 2022; Florida Supreme Court decision:

APPENDIX–II; Motion Seeking Discretionary Review; Motion for Reconsideration; District Court denials:

APPENDIX– III; Conclusive fingerprint and DNA analysis's from the F.D.L.E., showing some male individual, other than the victim, or Jesse Welch had possession of the stolen shotgun.

APPENDIX-IV; A copy of the Letter of Admissions; Including the date F.D.L.E. Received the evidence;

APPENDIX-V; Transcripts of Josh Nobles the alleged author of the letter of admissions; Cover Page followed by pages 107, 109, 123, 124, 135, & 137.

APPENDIX-VI; Transcripts of defense witness Daniel Smith over the possession of the stolen shotgun after the crime. Cover Page followed by page 221

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR CERTIORARI REVIEW

The petitioner respectfully prays that a Writ of Certiorari is issued to review the judgment below.

OPINIONS BELOW

The review requested is over decisions from **State Court's**. The opinion of the State District Court on the denial of the filing of a Belated Rule 3.850 (b)(1), over the denial of the review of Newly Discovered Evidence that "could" in all legality clear the petitioner of the charges convicted on is shown in **APPENDIX-I**.

The opinion of the State Supreme Court reconsidering review of the Newly Discovered Evidence appears in **APPENDIX-II**.

JURISDICTION

The date in which the highest State Court decided this issue was on July 13th, 2022. A copy of that decision appears in **APPENDIX-I**. The Florida Supreme Court stated that they lacked jurisdiction to hear the issue, and that NO petition for rehearing on their decision will be entertained.

After an appeal was filed and PCA'd in the First District Court of Appeals, and then a motion for Reconsideration filed and denied also in the First District Court of Appeals, a motion was filed in the DCA seeking the Discretionary Review of the State Supreme Court. **APPENDIX-II**.

Subsequently, the jurisdiction of this Honorable United States Supreme Court is invoked under 28 U.S.C.§1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Statute §924.33 (2009), allows "any theory or principle of law which supports the trial court's judgment" "to be affirmed by the appellate court"; "no judgment shall be reversed unless the appellate court is of the opinion after examination of the appeal papers that the error committed injuriously affected the appellant's substantive due process rights."

> **NOTE:** The substantive due process rights spoken of in this case is the limit on the governments power to enact laws or regulations, and prevent the filing of evidence that very well could exonerate the petitioner of the charges convicted on, that affect the petitioner's life, liberty, or property rights. When the newly discovered evidence was initially brought to the trial

> court by a hired for pay attorney, counsel waited until the two year time limit almost expired, then improperly raised the evidence in his motion instead of as the newly discovered evidence as it was received from F.D.L.E. as.

Counsel raised the newly discovered evidence in the Rule 3.850 Motion he was hired to file, only under the provision of a "Brady Violation" instead of a Newly Discovered Evidence claim under the 3.850 (b)(1) provision. This issue lies in the error of counsel presenting the evidence improperly, and then "burning" up the majority of the petitioner's two year filing time. The "letter of admissions", **APPENDIX-IV**, was received a year after the conviction and sentence had been rendered and imposed. The 3.850 Motion was denied well after the two year Newly Discovered Evidence filing time had expired.

Under Fla. R. Crim. P. 3.850(b)(1); and under the authority of *Jones v. State*-591 So. 2d 911(Fla. 1990); *Schlup v. Delo*-513 U.S. 2989, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995) ("Gateway requirement); *Delgado v. State*-515 So 2d 1244 (Fla. 3rd DCA 1999); *McGuffey v. State*-515 So 2d 105 (Fla. 4th DCA 1999); *Adams v. State*-543 So. 2d 1244 (Fla. 1989), receded from on different grounds in *Dixon v. State*-730 So 2d 265 (Fla. 1999), attorney negligence, after good intentions by the petitioner, and receiving erroneous information resulting in confusion "should" warrant a Belated Motion for Post Conviction Relief presenting newly discovered evidence.

In the "interest of justice", and under the "correct principle of law" concept, the D.C.A. "should've" reversed and remanded the circuit court's decision and allowed a

belated successive Rule 3.850 (b)(1) Motion to present evidence sent to him from the Florida Department of Law Enforcement that very well could prove that the petitioner is NOT the perpetrator of the crimes convicted on. **APPENDIX-III**

Not taking into account the trial, and then the 10 years in prison already served, the remaining 20 years left on the total sentence imposed, would be cruel and unusual punishment if the newly discovered evidence can be proven to be accurate and true, and the petitioner being innocent of the crimes doing time over. Article I, Section 17 of the Florida Constitution, and the Eighth Amendment to the United States Constitution. **APPENDIX-IV.**

Further, counsel presented the issue to be addressed under the wrong action, avenue, or proceeding so close to the two year time limit, not giving the petitioner the time needed to correct counsel's error. It's being alleged that a substantive due process violation has occurred with the lower tribunal denying the petitioner's ability to present the newly discovered evidence showing that someone else could have committed the crime the petitioner has been sentenced to 30 years in prison over. The correct avenue to present the newly discovered evidence would be a Belated Successive Rule 3.850 (b) (1). U.S.C.A. Const. Amends. V, and XIV.

Lastly, it's not believed that the court should accept, or even consider the explanation, or determination that counsel filed the Newly Discovered Evidence claim under a Brady Violation as a strategic maneuver.

STATEMENT OF THE CASE

The petitioner had been convicted on First Degree Arson (Count-I), and Burglary of a Dwelling While Armed (Count-II). The defendant was found guilty as charged on both counts in 2014. Mr. Welch was sentenced to thirty years of incarceration on Count II, and to a concurrent 10 year sentence on Count-I.

In early January of 2014, Mr. Michael Brooks, the victim, was living at 1524 Walton Road in Walton County, Florida. Among his personal affects at the residence was a .410 bolt-action shotgun which was the only personal item removed from the residence when it was burglarized.

On January 10th, 2014, Brooks finished his work for the day and stopped at his home long enough to gather some cloths and a toothbrush and a few other things and spent the night at his girlfriends house. The next morning, January 11th, 2014, at approximately 9:00 am, Mr. Brooks returned to his residence. Upon arrival Mr. Brooks noticed shattered glass outside the door, and smelled smoke. He realized there had been a fire the night before at his home when he was at his girlfriends house. Brooks called the police and an arson investigation commenced.

The following incidents support the aforementioned, and are shown in the trial transcripts, to prove that some of the occurrences that led up to the petitioner being charged with the crimes of cause, were actually committed by the person authoring the letter of admissions, received after the petitioner's conviction. This letter of admissions

was to be entered as Newly Discovered Evidence by hired for pay counsel.

Later in the day on January 11th, or possibly on the 12th, Brooks and his girlfriend had been told by Josh Nobles, a mutual acquaintance of theirs that he was in the position to return the missing shotgun. When Nobles gave Brooks the "stolen" shotgun, Brooks turned the shotgun over to the investigators at the Sheriff's Department. Nobles had testified at trial that he had the shotgun and was willing to turn it over to Brooks and his girlfriend. Why no-one got to the bottom of specifically where Nobles came into possession of the shotgun is defense counsel's guess!

Moving on, defense witness Daniel Smith testified at trial that he knew Josh Nobles, and used to work with him. Nobles was living with Smith and a woman by the name of Diane Bryant. Smith testified at trial that around January 11th, or the 12th, that he saw Nobles pull a gun from underneath a white Ford Taurus parked in the yard. Smith had watched as Nobles walked up towards the house and put the gun in a green truck. Smith identified Brooks' shotgun as the very same gun Nobles had in his possession.

The defendant had told investigators that he was with a female friend, Brenda Renee Batie the night of the burglary, and that Nobles had drove out and picked Mr. Welch up from Welch s' girlfriends house.

There are conclusive Laboratory Reports from F.D.L.E., (Shown in **APPENDIX-III**), containing supporting fingerprint analysis, D.N.A. presence from the Stolen Mossberg .410 Shotgun; and D.N.A. residue on the insides and outsides of both front

doors; and then on the outside of the backdoor showing that "someone" other than the man convicted of the crimes charged not only had possession of the ONLY item removed from the home that was burglarized, but that someone other than the man convicted of the crimes charged had handled the front and back doors of the home the night of the burglary.

There was the presence of a mixture of D.N.A. profiles along with the victim's and his girlfriends' on all three doors. The results from all tests are consistent with having originated from one male individual. Jessie Welch is excluded as the one man individual contributing D.N.A. to any of the items on or from the victims property. **APPENDIX-III**

Well after the conviction and sentence had been rendered and imposed, the De Funiak Springs Sheriff's Office received a letter of admissions stating that the petitioner Jesse Welch DID NOT commit the crime convicted of. The author of the letter stated that Josh Nobles was the perpetrator of that crime. The crime lab at F.D.L.E. Stated in there report that additional samples of Josh Nobles handwriting would be needed to compare with the letter of admissions to validate authenticity. **APPENDIX-IV**

A couple of key elements of Josh Nobles testimony during trial that counsel overlooked incriminating Mr. Nobles of the crime, (which supports the letter of admissions), is the State's admitted Trial Exhibit "F", which is in **APPENDIX-V** of this petition, a handwritten "map" of the occurrences and the actions between himself and the petitioner over the alleged "hiding" and "discovery" of the stolen shotgun before being

turned over to investigators for fingerprint analysis. Page 109; Lines 13-21.

On Page 123, Lines 09-25, Nobles tells the court that investigators with the De Funiak Springs Police Department came and talked to him. Nobles was able to tell the police where the stolen gun was originally placed after being stolen. Nobles stated that the gun was placed in the edge of the woods. Nobody told Nobles where in the woods the gun was placed, Nobles did not see anyone walk into the woods. Nobles was allegedly told by the petitioner that he placed the gun "somewhere". No specific location was ever disclosed. **APPENDIX-V.**

Page 124, Lines 2-16 When Nobles was asked why Jesse had to put the gun somewhere, Nobles figured that Jesse could not keep it at his home. Nobles claims that he had no knowledge of the shotgun having been stolen. Where does Nobles come off giving a shotgun allegedly "owned" by the petitioner to a third party unless Nobles knew that the gun had been stolen from Brook's home the night before. **APPENDIX-V.**

It's shown on page 135, Lines 2-15, that Nobles was asked when he decided to go and find the gun in the woods how did he start looking for it with no directions, location, of the placement of the gun, landmark, or any knowledge of what the gun looked like. Nobles wants the jury to believe that he walked into the woods randomly took a few steps and there it was. Page 137, Lines 2-22.

Also substantiating that the author of the "letter of admissions" "could" be responsible for committing the crimes the petitioner was convicted and sentenced over,

is the man who was seen handling the weapon by a third party before the shotgun was turned over to the rightful owner then to investigators for processing. Mr. Daniel Smith witnessed Mr. Josh Nobles hiding then transporting the shotgun before it was ever turned over to the police for fingerprint and D.N.A. analysis within a day or so of the burglary. Mr. Daniel Smith was with Josh Nobles around the 11th, or the 12th of January. Mr. Smith testified and witnessed that Mr. Nobles pulled the stolen shotgun out from underneath a white Ford Taurus that was parked in Mr. Smith's yard while Nobles was staying at Smith's house. Page 221, Lines 8-14. **APPENDIX-VI.**

REASONS FOR GRANTING THE PETITION

Statements of actions disclosed during trial, on occurrences that took place during and after the commission of the crime show that the person convicted of the crime might not have committed the crime convicted on.

Additionally the petitioner has been prohibited from filing in a timely manner due to no fault of his own, evidence that could possibly prove someone else committed the crime convicted over:with hired for pay counsel's error in presenting newly discovered evidence as a Brady Violation", i.e., the "letter of admissions", was forwarded to the petitioner from F.D.L.E. well after the petitioner had been in prison over the current conviction;

Lastly with the contents of the "letter of admissions" going without being tested, the

petitioner had been convicted over evidence that was NOT proven beyond a reasonable doubt.

CONCLUSION

Subsequently, with Mr. Welches' D.N.A. profile being excluded by F.D.L.E., as the one male individual profile being discovered, and along with the letter of admissions that showed up at the Sheriff's Office out of the clear blue sky authoring that someone other than the man convicted of the crimes of cause is currently in prison over those crime. APPENDICES-III, & IV.

Therefore, the petitioner is seeking an order from this Court compelling the trial court in and for Walton County, Florida, to accept from the petitioner, within a reasonable amount of specified time the filing of a Belated Rule 3.850(b)(1) Motion presenting the newly discovered evidence, (the letter of admissions), to further compel the author of the letter of admissions to relinquish samples of his handwriting for comparison with the Department of Law Enforcement over the "letter of admissions".

Respectfully Submitted

/S/ Jesse Raymdle Welch

Jessie Raymdle Welch
DC# 470979 / G1-111