

No.

22-7774

ORIGINAL

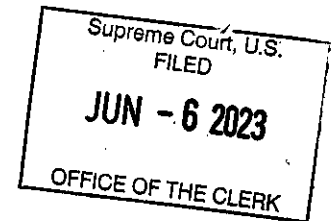
IN THE
SUPREME COURT OF THE UNITED STATES

DUANE ARMSTRONG – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT(S)

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



Duane Armstrong
Liberty Correctional Institution,
11064 N.W. Dempsey Rd.
Bristol, Florida 32321

QUESTION(S) PRESENTED

Before the Supreme Court review during trial in front of a jury. Does the court's need a second analyst to testifies, to the first analyst opinion containing veracious of petitioner's finger print?

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:

Judge Lisa Campbell, Thirteenth Judicial Circuit, State of Florida Danielle Webber Defenses Attorney: State of Florida Eric Hubbs State Defense Attorney Kay Murray, State of Florida, Attorney Defense. Hearing Judge Barbara Thomas Twine Thirteenth Judicial Circuit, State of Florida Public Defender Howard L. “Rex” Dimmig II. State of Florida, Hamel, Jill, Esq., Assistant State Attorney, State of Florida, Ashley Moody Attorney General, State of Florida. Andrew Warren State Attorney State of Florida. Travis J. Coy, Assistant State Attorney, State of Florida Senior Judge J. Padgett

RELATED CASES

Telford v. State, 978 So.2d 225 (2008)

Linn v. Fossum, 946 So.2d 1032 (Fla. 2006)

Jones v. State, 200 So.2d 574 (1967)

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APPENDIX A 3.850 Motion / Granted Motion / Final Denial of Motion / Motion
for Rehearing

APPENDIX B Notice of Appeal / Title Brief

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APPENDIX F

TABLE OF AUTHORITIES CITED

	Cases
<u>Butcher v. United States</u>	14
<u>Holland v. State</u>	14
<u>Jones v. State</u>	3, 13
<u>Linn v. Fossum</u>	3, 13
<u>Telford v. State</u>	3, 13

STATUTES AND RULES

90.403 Fla. Stat. (1995)

90.704 Fla. Stat. (2005)

Effect. Fed. R. Evid. 90.802

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 court:**

The opinion of the United States Court of Appeals appears at Appendix D 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
2/09/2023

☐ 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 May 10th, 2023 (date) on June 9th, 2023 (date) in Application No. 22A983.

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. _____.

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. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. §

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional statutory provisions consist of following the law that's held at a level of law which insists on Armstrong 6th Amendment to be confronted with the witness against him in this case. Also Armstrong 14th amendment section (1) due process of law and equal protection of the law must be implemented as a focal, point of law. These constitutional issues that validate Mr. Armstrong's rights to a fair trial. The error was harmful because the party's expert testimony was the focal point of the trial. When the state opens the door to misleading testimony or has made specific factual assertions. The opposing party has the right to correct that information in order that the jury not be misled in this matter Armstrong never had a chance to address the issue because of rights being violated in this matter.

STATEMENT OF THE CASE

(A) This is an Appeal from the United States Courts of Appeals for the Eleventh Circuit versus secretary, Florida Department of Corrections, *Armstrong* was charged by information with burglary of an unoccupied dwelling, dealing in stolen property, false information to a pawnbroker form (over \$300), and grand theft third degree. (Appendix) A. 3.850 motion (Hillsborough County case No.: 12-CF-1740

According to the states theory of the case no January 25th, 2012 petitioner broke into the victim's house, stole jewelry, and sold the jewelry to a pawnbroker. (Appendix) A. He sold the jewelry at the pawn shop for \$400 to \$450. A jury tried and convicted petitioner guilty as charged on May 22, 2013 (Appendix) A. The grand theft count was later dismissed. The state court sentenced petitioner as a habitual felony offender on all three counts and as a prison release re-offender on the burglary count. He received 20 years in prison with a 15-year minimum mandatory on the burglary court. For dealing in stolen property and giving false information to a pawnbroker form.

Appellate Procedure (B)

On direct appeal. The Florida Second District Court of Appeal affirmed Armstrong's conviction and sentenced without opinion. Armstrong v. State, 178 So.3d 405 (Fla. 2nd DCA 2015) petitioners filed a motion for Post-Conviction

Relief pursuant to Florida Rule of Criminal Procedural 3.850 (Appendix A) The Appellate Court affirmed without opinion see Armstrong v. State, 268 So.3d 698 (Fla. 2nd DCA 2019). In this Habeas Corpus, Petitioner raises ineffective assistance of trial counsel.

(c) Federal Proceedings

Mr. Armstrong filed his timely *Pro se* petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. Section 2254. On March 29, 2019. He also filed a Reply to the response (Appendix B) United States District Judge William F. Jung denied that petition on March 30, 2021.

Mr. Armstrong filed a C.O.A. certificate of appealability on the issue whether Armstrong had shown that trial counsel was ineffective for failing to object to the forensic print analyst's testimony that a second analyst had verified her comparison of Armstrong's finger prints. On 2/09/2023 Judges Jordan, Grant and Black. Affirmed Mr. Armstrong's claim with in opinion. See Appendix (D). Mr. Armstrong is incarcerated at Liberty Correctional Institution.

WHEREFORE, the Petitioner Mr. Armstrong based on the facts and authorities presented herein. Moves this court to reverse and remand. The United States Court of Appeals order and opinion does not show conclusively that Mr. Armstrong is entitled to no relief. In addition, the United States Court of Appeals

conclusions of law and failure to address the claim raises mandates reversed this petition for Writ of Certiorari must be reversed for further proceedings. And or another relief this court deems proper and fit.

REASONS FOR GRANTING THE WRIT

Mr. Armstrong did not receive effective assistance of counsel at trial Jones v. State, 200 So.2d 574 (1967) failure to object to the admission and reference to a second fingerprint analyst on the grounds of hearsay amounted to deficient performance. In order to satisfy the “performance” prong of the *Strickland* test, a petitioner is required to show that his attorney’s representation “fell below an objective standard of reasonableness” which is measure by ‘reasonableness under prevailing professional norms’. Strickland v. Washington, 466 U.S. 688 104 S.Ct 2052. That is, a petitioner must show that “counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed by the Sixth Amendment” *Id.* At 687

The state Post-Conviction court granted petitioner an evidentiary hearing on his single claim of ineffective assistance of counsel the court found that petitioner presented a facially sufficient claim noting the Fourth district Court of Appeal has held that it is improper for a finger print expert who has reached his or her independent opinion to explain the use of a second examiner in the verification process. See Telford v. State, 978 So.2d 255 (2008) under *Strickland*, a petitioner needs to only show in regards to prejudice that the result of the proceeding would have been different “*Strickland*” 466 U.S. at 694. “A reasonable probability is a

probability sufficient to undermine confidence in the outcome” Id. Hence, the petitioner in his Post-Conviction claim “affirmatively” proved that his trial attorney’s failure to object was not harmless, but rather “was prejudicial. Butcher v. United States, 368 F.3d 1290, 1293, 95 F. App’x 1290 (11th Cir. 2004) citations omitted.

The district court judge in its order affirming Mr. Armstrong’s Appeals from the United States Court of Appeal for the Eleventh Circuit stating in it’s opinion that the state described the finger print evidence in closing as the “most important evidence” in the case, and the jury asked questions about the accuracy of finger print results before returning its verdict, reflecting the jury understood the significance of that evidence. That was part of the appeals court finding in which takes you to Linn v. Fossum, 946 So.2d 1032 (Fla. 2006) Where there’s clearly a conflicting testimony indeed, Mr. Jarvis hearsay testimony had a substantial and injurious effect or influence on the jury verdict. Holland v. State, 775 F.3d 1294; 2014 U.S. App. Lexis 24506 (2014), first, the bolstered the only state witness testimony that directly connected petitioner to the burglary offense. Second the jury showed interest in whether there had been any cases where a fingerprint expert has proven to be unreliable. Hence, Ms. Jarvis’s bolstered trial testimony became a material fact in issue that may have reflected in the final results of the verdict.