No. 23-6238

ORIGINAL

In the

SUPREME COURT OF THE UNITED STATES

Fall Term, 2023

William Jarvis,

Petitioner,

v.

Ricky S. Dixon, Secretary Florida Department of Corrections,

Respondents.

On a Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

William Jarvis, DC# 125844
Petitioner, *pro se*
Zephyrhills Correctional Institution
2739 Gall Boulevard
Zephyrhills, FL 33541-9701
(no phone or email)

(a) QUESTIONS PRESENTED

1. Whether the Fifth Amendment right to be free from the compulsion to make self incriminating statements includes the right to not be required to provide evidence to substantiate claims of innocence, causing self-incrimination, due process, and equal protection violations.

2. Whether or not the Sixth Amendment right to confrontation includes the right to question at trial the individuals who "found" evidence which was subsequently introduced at trial, and formed an essential bit of evidence against the Defendant, causing due process and equal protection violations. In this case, a unique situation is presented. Significantly, is one law enforcement officer allowed to testify as to the finding of allegedly significant evidence found by a different, non-testifying officer? Does this present an improper circumvention of the defendant's right to confront witnesses against him?

3. Whether the Sixth Amendment right to competent and effective trial counsel can extend to counsel which passively allows the government (prosecutor) to make improper, inflammatory, and other impermissible statements in great frequency, to the jury at trial, without counsel making objections or requesting corrective measures from the trial court, causing due process and equal protection violations.

4. Whether the Sixth Amendment right to competent and effective trial counsel can extend to counsel which fails to subject the state's case to meaningful adversarial testing by failing to submit a facially sufficient motion for judgment of acquittal, causing due process and equal protection violations.

5. Whether the Sixth Amendment right to effective trial counsel can extend to trial counsel who abandons an essential argument of the defense without consultation with the intelligent and active defendant, to the defendant's detriment at trial, causing a due process violation.

6. Whether the state courts err when they block submission of evidence that another person may have committed the crime, in violation of due process rights, and contrary to this Court's decision in *Holmes v. South Carolina*, causing due process and equal protection violations.

7. Issue Seven below is waived before this Court, due to the correct application in the Eleventh Circuit Court of Appeals.

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In the

SUPREME COURT OF THE UNITED STATES

William Jarvis, *Petitioner*,

v.

Ricky S. Dixon, *Respondents*.

On a Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Eleventh Circuit

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below, where the Eleventh Circuit Court of Appeals denied a Certificate of Appealability in regards to a Petition for Writ of Habeas Corpus, denied in the Middle District of Florida, regarding a criminal conviction in state court, pursuant to 28 U.S.C. § 2254

William Jarvis, DC# 125844
Petitioner, pro se
Zephyrhills Correctional Institution
2739 Gall Boulevard
Zephyrhills, FL 33541-9701
(no phone or email)

PARTIES: Rule 14.1 (b) (i)

The parties to this action include only the Petitioner, Ricky S. Dixon the Respondent, and the State of Florida.

CORPORATE DISCLOSURE STATEMENT: Rule 14.1 (b) (ii)

There are no corporate entities involved in this case.

PRIOR PROCEEDINGS RELATED TO THIS CASE Rule 14.1 (b) (iii)

As listed below:
Court, Docket Number, Caption, Date of Judgment, Purpose; Result, and Citation (if known)

Fourth Judicial Circuit Court, in and for Duval County, Florida
16-2001-CF-2576-AXXX-MA
State of Florida v. William Jarvis
November 14, 2003 (Judge W.A. Wallace, III)
Trial: Judgment (guilty, multiple counts) and Sentence

First District Court of Appeals, State of Florida
1D03-5498
William Jarvis v. State of Florida
December 22, 2005
Direct appeal of convictions: "Per Curiam Affirmed" (without opinion)
922 So. 2d 198 (Fla. 1st DCA 2005) (following motion for rehearing)

Supreme Court of the United States
05-11326
William Jarvis v. Florida
October 2, 2006
Petition for Writ of Certiorari; denied (without opinion)
549 U.S. 849, 127 S. Ct. 112, 166 L. Ed. 2d 86 (2006).

Fourth Judicial Circuit Court, in and for Duval County, Florida
16-2001-CF-2576-AXXX-MA
State of Florida v. William Jarvis
(spring) ____, 2008 (Judge M.A. Cooper)
Post-conviction motion, illegal sentence; Denied

First District Court of Appeals, State of Florida
1D08-1682
William Jarvis v. State of Florida
Appeal of denial of Fla.R.Crim.P. 3.800 post conviction motion:
"Per Curiam Affirmed" (without opinion)
993 So. 2d 1121 (Fla. 1st DCA 2008)

Fourth Judicial Circuit Court, in and for Duval County, Florida
16-2001-CF-2576-AXXX-MA
State of Florida v. William Jarvis
July 12 , 2012 (Judge E.A. Senterfitt)
Fla.R.Crim.P. 3.850 post conviction motion, mostly on ineffective counsel; Denied

First District Court of Appeals, State of Florida
1D12-3856
William Jarvis v. State of Florida
Appeal of denial of Fla.R.Crim.P. 3.850 post conviction motion:
"Per Curiam Affirmed" (without opinion)
134 So. 3d 953 (Fla. 1st DCA 2014)

Fourth Judicial Circuit Court, in and for Duval County, Florida
16-2001-CF-2576-AXXX-MA
State of Florida v. William Jarvis
(spring?) ____, 2012 (Judge M. Aho)
Post-conviction motion, Fla.R.Crim.P. 3.800 illegal sentence; Denied

First District Court of Appeals, State of Florida
1D17-4186
William Jarvis v. State of Florida

Appeal of denial of Fla.R.Crim.P. 3.800 post conviction motion:
Reversed with instructions to modify sentence (after motion for rehearing)
289 So. 3d 572 (Fla. 1st DCA 2020)

United States District Court, Middle District of Florida,
Jacksonville Division
3:19-cv-01097-MMH-PDB
William Jarvis v. Secretary, Florida Department of Corrections
July 20, 2022 (Judge M. Morales Howard)
Petition for Writ of Habeas Corpus (28 U.S.C. §2254); Denied
2022 U.S. Dist. LEXIS 128952 (M.D. Fla. 7/20/2022)

United States Court of Appeals for the Eleventh Circuit (Atlanta)
22-12740-F
William Jarvis v. Ricky D. Dixon, Sec'y, Fla. Dept. of Corr.
Petition for Certificate of Appealability, denied 6/27/2023
Motion for Reconsideration, **denied 8/14/2023**
(start of computation for Rule 13.1 date, 90 days)

CITATIONS OF REPORTS ENTERED IN THE CASE: Rule 14.1 (d)

see section (b)(iii) above.

BASIS FOR JURISDICTION IN THIS COURT Rule 14.1 (e)

(i) Date of the judgment sought to be reviewed: June 27, 2023 (Court of Appeals for the Eleventh Circuit), Exhibit C.

(ii) Date of any order respecting rehearing: **August 14, 2023, Exhibit A.**

(iii) n/a (cross-petition)

(iv) Statutory provision which confers jurisdiction on this Court to review the judgment in question: 28 U.S.C. §1254

(v) n/a (re: notifications pursuant to Rule 29.4(b) or (c) have been made)

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE Rule 14.1 (f)

Fifth Amendment to the U.S. Constitution

1). "**No persons shall . . . . nor shall be compelled in any criminal case to be a witness against himself . . . .**" ("self incrimination clause")

2). "**. . . nor be deprived of life, liberty, or property, without due process of law. . . .**" (the "due process clause")

Sixth Amendment to the U.S. Constitution:

3). "**In all criminal prosecutions, the accused shall enjoy the right . . . . ; to be confronted with the witnesses against him; . . .**" ("the confrontation clause," including applications as defined by Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004); and Davis v. Washington, 547 U.S. 813, 828-34, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006); et. al.).

4). "**In all criminal prosecutions, the accused shall enjoy the right to . . ., and to have the assistance of counsel for his defense.**" Explained in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Fourteenth Amendment to the U.S. Constitution

5). "**. . . . nor shall any State deprive any person of life, liberty, or property without due process of law; . . . .**" (the "due process clause").

6). "**nor deny to any person within its jurisdiction the equal protection of the laws.**" ("equal protection clause").

CONCISE STATEMENT OF THE CASE Rule 14.1 (g)

On January 6, 2001, the ex-wife of the Petitioner was killed when a gasoline-enhanced pipe bomb disguised as a late Christmas gift exploded as she was opening it at home in her bathroom. Also injured were her boyfriend and her step-mother. The resulting fire caused great damage to the house. It wasn't until several weeks later when the Petitioner was arrested and charged with murder, arson, and two counts of placing a bomb causing injury. After several changes of defense counsel due to various conflicts, two-and-a-half years later, a two-week long trial was held in September, 2003. **There was no direct evidence presented that William Jarvis, and only William Jarvis, had planned, created, then delivered the bomb.** Even the trial judge affirmed that the prosecution was a circumstantial evidence case. Despite the fact that the prosecution's case was built on a pyramid of presumptions, the jury found the Defendant (Petitioner) guilty on all counts. However, they did not return a recommendation for the death penalty as sought by the prosecution.[1] The trial court sentenced Jarvis to life on all counts, including the provision of "life without the possibility of parole" on the

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[1] Jarvis is of the opinion that a death penalty may have been procedurally and judicially more beneficial, in that he then would have received a full review of the case by the Florida Supreme Court. As it turned out, the state appellate court merely returned a decision of "*per curiam affirmed*," without explanation or opinion, preventing Jarvis from receiving the opportunity for a meaningful further review.

murder count.[2]

Petitioner appealed the decision through normal direct appeals channels,[3] including a petition for certiorari in this Court,[4] to no avail.

Petitioner then filed normal postconviction motions, pursuant to Florida Rules of Criminal Procedure Rules 3.800 (alleging the sentences were illegal[5]), and 3.850 (largely based on *Strickland* [6] claims, but also arguing points raised in this Petition), as well as Florida Rules of Appellate Procedure, rule 9.141 (arguing ineffective assistance of appellate counsel[7]). All were denied. The appellate courts affirmed each without opinion, including the 3.850 appeal.[8] A second 3.800 motion's denial was eventually reversed on appeal (after rehearing), granting Jarvis's motion to run the sentences concurrently instead of consecutively.[9]

Jarvis then filed a timely Petition for Writ of Habeas Corpus in the Middle District of Florida, pursuant to 28 U.S.C. §2254.[10] The district court

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[2] The sentences were originally ordered as consecutive. A later state appellate court in 2020 ordered them to be modified to run concurrently.

[3] *Jarvis v. State*, 922 So. 2d 198 (Fla. 1st DCA 2003) (direct appeal)

[4] *Jarvis v. Florida*, 549 U.S. 849 (2006) (on direct appeal, certiorari denied)

[5] *Jarvis v. State*, 993 So. 2d 968 (2008) (appeal of first 3.800 denial)

[6] *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984)

[7] *Jarvis v. State*, 993 So. 2d 1121 (Fla. 1st DCA 2008) (IAAC)

[8] *Jarvis v. State*, 134 So. 3d 953 (Fla. 1st DCA 2014) (appeal of 3.850 denial)

[9] *Jarvis v. State*, 289 So. 3d 572 (Fla. 1st DCA 2020) (sentence modification appeal)

[10] The points raised in the §2254 petition were restricted in number due to the page

denied relief,[11] heavily quoting the 3.850 state court's denial as the basis of most of the text used in the federal court. A Petition for Certificate of Appealability (COA) was denied by the Eleventh Circuit Court in Atlanta, GA[12], and motion for reconsideration also denied on August 14, 2023, leading to this timely Petition for Writ of Certiorari.

Rule 14.1 (g) (i) not applicable

Rule 14.1 (g) (ii) This case follows a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §2254 in the Middle District of Florida. Exhibit F. A summary of the seven points raised in the attorney-filed petition is as follows:

1. Due process (**Fifth, Fourteenth Amendments**) was violated when at trial the prosecutor asked the defendant (Jarvis), to produce evidence, and the court denied a mistrial.
2. The right to confront witnesses (**Sixth Amendment**) was denied when evidence crucial to the prosecution was admitted at trial without

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limitations of the Rules of Habeas Corpus Petitions. Not all of the issues raised in state courts were brought to the attention of the federal district court, or later to the circuit court.

[11] *Jarvis v. Sec'y*, 2022 U.S. Dist. LEXIS 128952, Case number 3:19-cv-01097-MMH-PDB, Middle District of Florida, §2254 habeas corpus denied 7/20/2022.

[12] *Jarvis v. Sec'y*, Case number 22-12740, 11th Circuit, denial of COA filed 6/27/2023, Judge C. Wilson.

substantiation by the "witness" who found the evidence.

3. Jarvis was denied effective assistance of counsel **(Sixth Amendment)** when counsel failed to object to over two dozen instances of improper, prohibited, and historically criticized comments to the jury in opening and closing arguments, denying Jarvis access to a fair trial.[13] Such ineffective assistance amounts to violation of due process **(Fifth, Fourteenth Amendments)**.

4. Jarvis was denied effective assistance of counsel **(Sixth Amendment)** when counsel failed to properly and fully argue for a judgment of acquittal, thereby not presenting a meaningful testing of the State's case. Such ineffective assistance amounts to violation of due process **(Fifth, Fourteenth Amendments)**.

5. Jarvis was denied effective assistance of counsel **(Sixth Amendment)** when counsel failed to investigate and present valid alibi evidence which would have presented reasonable doubt as to his guilt. Such ineffective assistance amounts to violation of due process **(Fifth, Fourteenth Amendments)**.

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[13] The 3.850 motion reported and quoted five such remarks in the opening statement by prosecutor Jay Taylor, then eleven impermissible remarks in his closing statement, followed by sixteen remarks by co-prosecutor Jay Plotkin in final closing remarks (after defense closings). In sum, there were thirty-two (32) remarks quoted in the 3.850 motion, which Jarvis described as impermissible.

6. The State courts erred where they did not allow Jarvis to present evidence of guilt of a third party at trial, evidence which would have cast doubt on his own conviction, causing due process violations (**Fifth, Fourteenth Amendments**) against Jarvis, as defined in *Holmes*[14], which stood for the proposition that rules limiting the introduction of evidence could be considered violative of the accused's rights to present a full and meaningful case in his defense.

7. The state courts erred where they did not properly note changes in jurisprudence that should have been applied to the Appellant's case, where cases were decided while Jarvis's case was on appeal (*Crawford* and *Holmes* were both decided while Jarvis's case was "in the pipeline"), and those cases were reversed in favor of the appellants, leading to due process and equal protection violations against Jarvis (**Fifth, Fourteenth Amendments**). However, the Middle District of Florida correctly determined that Jarvis was entitled to the benefit of the new decisions – then incorrectly denied relief anyway.

The petition for federal habeas corpus[15] was denied by the Honorable Judge

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[14] *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)

[15] The points raised in the §2254 petition were limited in number due to the page limitations of the Rules of Habeas Corpus Petitions. Not all of the issues raised in state courts were brought to the attention of the federal District Court, or later to the Circuit Court.

Marcia Morales Howard on July 20, 2022. Exhibit E. A Certificate of Appealability (COA) was preemptively denied in her order. An appeal and application for COA was timely filed in the Eleventh Circuit Court (Atlanta). Exhibit D. The Petition for COA (*pro* se) was denied by the Circuit Court Judge C. Wilson on June 27, 2023, Exhibit C. and the timely Motion for Reconsideration, Exhibit B (*pro* se), was similarly denied, August 14, 2023, Exhibit A. This petition follows within 90 days, as required by Supreme Court Rule 13.1. (November 12 was the 90th day, which fell on Sunday. This Petition has been filed via the "inmate mailbox rule"[17] on the next business day: Monday, 13 November 2023).

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[17] Cf. *Houston v. Lack*, 487 U.S. 266 (1988)

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

see Rule 10, Rule 14.1 (h)

This case comports with Rule 10(a), where:

"a United States court of appeals has entered a decision in **conflict with the decision of another United States court of appeals on the same important matter**; . . . or has so far departed from the accepted and usual course of judicial proceedings, . . . as to call for an exercise of this Court's supervisory power[.]"

In addition, Rule 10(c) also applies, where:

"a United States court of appeals . . . **has decided an important federal question in a way that conflicts with relevant decisions of this Court.**"

STATEMENT OF THE FACTS MATERIAL TO THE ISSUES PRESENTED AND REASONS FOR GRANTING THE PETITION

Issue (1) The trial court allowed (and subsequent appellate courts either demurred or declined to reverse) a comment by the prosecutor cross-examining the Defendant (Jarvis) on the topic of evidence not brought out in trial. In fact, the prosecutor asked Jarvis "where are they?"[18] This kind of inquiry of the Defendant occurred twice, in different periods of the

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[18] See Trial Transcripts, volume XX, pages XXXX-XXXX

prosecution's cross-examination of Jarvis.[19] Such amounted to a violation of the "self-incrimination clause" of the **Fifth Amendment**, and a violation of "due process" under the Fifth and **Fourteenth Amendments**. Thus, this issue fits the Rule 10(c) justification for certiorari.

Issue (2) The U.S. Eleventh Circuit court affirmed the decision of the Northern District Court in denying Jarvis's "Petition For Writ Of Habeas Corpus" pursuant to 28 U.S.C. §2254. One of the major points in the petition involved a Confrontation Clause violation. The District Court latched onto a case that is so far different from all other post-*Crawford* cases as to constitute a conflict with relevant decisions of *this* Court. By affirming (without explanation) the District Court's decision, the Eleventh Circuit Court (in Atlanta) adopted the lower tribunal's decision. As explained *infra*, the case cited by the district court (and affirmed by the circuit court) is distinguishable from Petitioner's case enough that it should not be considered precedential authority. This issue fits the Rule 10(a) justifications for certiorari, in that the decision below **conflicts with all other circuit courts** on the topic.

Issue (3) Jarvis complained in post-conviction proceedings regarding

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[19] In a sidebar conference, the State admitted to the trial judge that the questions were constitutionally improper, and promised to avoid similar further questions. No curative instruction was given to the jury regarding the implied obligation that Jarvis had a duty to provide exculpatory evidence.

over two dozen comments made by the prosecution in opening and in closing remarks – remarks which historically have been condemned, disapproved, and declared improper by appellate courts in all levels. Yet, Jarvis's counsel at trial did not object to the objectionable comments made by the two prosecutors. Defense counsel was not acting as an effective counselor, in violation of the **Sixth Amendment,** as explained in *Strickland* [20], *Kimmelman* [21], and *Cronic.*[22]

Issue (4) Jarvis complained that his attorney failed to perform as an effective attorney as required by the **Sixth Amendment,** and described in *Strickland*, *Kimmleman*, and *Cronic*, where he failed to request a judgment of acquittal (JOA) which comported with the requirements of criminal law practice. While the federal district court noted that defense counsel had orally submitted a motion for judgment of acquittal twice, Petitioner contends that both motions were mere "boilerplate," and so did not properly test in an adversarial manner the State's case by a valid JOA motion, as required by state caselaw.

Issue (5) The Petitioner/Defendant claimed to have not been in a place able to have committed the crimes as charged. As part of his pre-trial

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[20] *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).
[21] *Kimmleman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).
[22] *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1980).

discussions with counsel, he described various events which precluded his participation in the crime, and asked counsel to confirm various facts. Jarvis herein contends that counsel was **Sixth Amendment** deficient according to *Strickland* by his failure to properly investigate and present the alibi evidence as requested. Further, counsel failed to request the "Florida Standard Jury Instruction" regarding alibi evidence, when such evidence had been presented to the jury.

Issue (6) The Petitioner/Defendant at trial attempted to present evidence that another person was likely to have committed the crimes which Jarvis was convicted of. After listening to a proffer (outside of the presence of the jury), the trial judge disallowed the testimony of the witness, ruling that it was not relevant enough in this case. Petitioner/Defendant submits that the trial court's exclusion of the proffered testimony was a violation of *Holmes v. South Carolina*,[23] in that the trial court's ruling was an unreasonable restriction on the introduction of evidence tending to negate the evidence of guilt, especially when it shows the possible guilt of another party. *Holmes* explained such as a **Fourteenth Amendment** due process violation.

Issue (7) The Florida courts denied Jarvis relief where Jarvis cited *Crawford* and *Holmes*, on the basis that the cases were decided after Jarvis's

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[23] *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)

trial. The state post-conviction court especially cited *Witt v. State*[23] for the prospect of non-retroactivity of court decisions unless specifically ruled so. However, Jarvis claimed that the cases, *Crawford* and *Holmes*, should apply, because his case was in the "appeals pipeline" when the cases were decided, even though they were not included in appellate briefs. The 2254 court correctly noted that Jarvis was entitled to the benefit of the "pipeline" rule, see Exhibit E at page 32, citing *Griffith v. Kentucky*,[24] 479 U.S. at 327. However, the district court erroneously reasoned that the state courts considered *Holmes* and *Crawford* when deciding Jarvis's case on appeal. This cannot be safely assumed, as the opinion describes; the state trial court (years after *Crawford* and *Holmes*) declined to consider these constitutional cases. Who's to say the state appellate court didn't make the same improper assumption as to the inapplicability of *Crawford* and *Holmes* in their no-opinion decisions?

ARGUMENTS IN DEPTH

I. Question One: Whether the Defendant's due process rights and right to be free from self-incrimination were violated when the prosecutor asked Jarvis to present evidence in support of Jarvis's version of events, and the

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[23] *Witt v. State*, 387 So.2d 922 (Fla. 1980)

[24] *Griffith v. Kentucky*, 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987)

court denied a request for a mistrial.

During one line of cross-examination of the Defendant regarding his model rocketry hobby, the prosecutor asked Jarvis "where are they?"[26] This was objected to a few minutes later by defense counsel (who didn't catch the exchange at first), on grounds that the Defendant has no obligation to produce any evidence in support of his defense. This kind of inquiry of the Defendant occurred twice, in different periods of the prosecution's cross-examination of Jarvis. At another line, the prosecutor ask Jarvis "where are the emails?"[27] when Jarvis described reporting certain violations when Jarvis was working part-time as an online chat monitor. Both of these lines of questioning amounted to a violation of the "self-incrimination clause" of the **Fifth Amendment**, and a violation of "due process" under the Fifth and **Fourteenth Amendments**. As the old adage goes, "you can't unring that bell." Sometimes the damage has been done. Courts have recognized that there are trial violations which cannot be fixed by giving a curative instruction, or by the use of standardized instructions.

> "The giving of a curative instruction will often obviate the necessity of a mistrial. However, there are some instances in which the prejudice is so great that it is impossible 'to unring the bell.' "

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[26] See Trial Transcript Vol. 26, pages 2736-2737

[27] See Trial Transcript Vol. 26, pages XXXX-XXXX

Tumblin v. State,[27] 29 So. 3d at 1102.

> It is not unreasonable to conclude that in many such cases the jury can and will follow the trial judge's instructions to disregard such information. Nevertheless, as was recognized in Jackson v Denno, supra, there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.

Bruton v. United States,[28] 391 U.S. at 135, citing *Jackson v. Denno,* 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1968).

II. Question Two: Whether or not the Sixth Amendment right to confrontation includes the right to question at trial the individuals who "found" evidence which was subsequently introduced at trial, and formed the most essential bit of evidence against the Defendant.

The Sixth Amendment states in relevant part: "the accused shall enjoy the right [...] to be confronted with the witnesses against him." This has developed in part to the hearsay rules within the Rules of Evidence in federal and state courts.[29] This Court has further explained that a witness against the defendant generally must testify at trial when the statements made by the witness are of evidentiary value. See *Crawford v. Washington* and *Davis*

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[27] *Tumblin v. State*, 29 So. 3d 1093, 1102 (Fla. 2010), quoting *Graham v. State*, 479 So. 2d 824, 825-26 (Fla. 2d DCA 1985)

[28] *Bruton v. United States*, 391 US 123, 88 S. Ct. 1620, 20 L Ed 2d 476 (1968)

[29] While the State of Florida has not totally adopted the Federal Rules of Evidence, they are similar, and found in Chapter 90, Florida Statutes. The numeration within Chapter 90 matches almost exactly the Federal Rules of Evidence. i.e., Rule 802 Fed.R.Evid. matches §90.802, Fla. Stat., etc.

v. Washington, and their progeny.

Inter-Circuit Conflict:

The Middle District of Florida latched on to what the Petitioner contends is the *ONLY* case in all 13 Circuits, and the 94 districts, as reported in a LEXIS-based DVD-ROM database, where *any* court read *Crawford* the way the Middle District Court of Florida did when it cited *United States v. Sanjar*, 876 F. 3d 725 (5th Cir. 2017) in Jarvis's case (Exhibit E, page 24). In a search for all references to *Sanjar*, Petitioner found 71 cases which cited *Sanjar*, but in only one – Jarvis's 2254 case in the Middle District of Florida – was there an opinion which decided a *Crawford*-type controversy.

Courts which cite to *U.S. v. Sanjar*, 876 F. 3d 725 (5th Cir. 2017) (as of database updated July 18, 2023).

Circuit	District Court level reported decision	Circuit Court level decision
1st	0	0
2nd	1	0
3rd	0	0
4th	2	1
5th	27	33
6th	1	2
7th	1	1
8th	1	0
9th	0	0
10th	0	0
11th	only 1: ***Jarvis***	0
D.C. Circuit	0	0
Federal Circuit	0	0
Total **71**	34	37

All of the other cases found each cited *Sanjar* for some other legal precept, including sufficiency of the evidence, conspiracy, and restitution issues.

The passage in *Sanjar* which the Middle District of Florida pointed to allowed the testimony of a law enforcement officer who was not the one who "discovered" the evidence at question. The *Sanjar* court allowed it, because the testifying officer actually supervised the collection of the binders introduced as evidence. This is inapposite to the situation in Jarvis's case, where the testifying officer not only was not supervising the collection of the items, he was in the driveway outside of the home where the evidence was (allegedly) discovered. He did not supervise the collection of the evidence in the site, like the officer in *Sanjar*. The case cited by the District Court is not on point.

In fact, in all of the research the Petitioner has been able to search, he has *not found one case* where evidence found by a non-testifying witness (law enforcement investigator) was allowed to be introduced at trial against a *Crawford* or Sixth Amendment confrontation claim.

Make no mistake. The introduction of the evidence was "testimony" under the guidelines of *Crawford*, as the Supreme Court explained especially that:

" 'Testimony,' in turn, is typically 'a solemn declaration or

affirmation made for the purpose of establishing or proving some fact.'"

Crawford, 541 U.S. at 51 [emphasis added], quoting Noah Webster's *An American Dictionary of the English Language* (1828),

As Detective Godbee testified (Exhibit K), he was outside the house, in the driveway, when other (unnamed) investigators brought items to him for washing.

[Trial Transcript, Page 1166, starting at line 6] [*Emphasis added throughout*]

[Direct examination by Prosecutor Jay Plotkin, Assistant State Attorney]

Q: Can you describe generally how the processing worked?

A: Well, what we did on the first day, **they** set up a table that's called sifting or procession table. [. . .] [*description of table, with mesh screens*] You know, debris was put on that and strained some times, even washed down and what didn't drop through that screen was looked at, some of it was collected and we determined it might possibly be of evidential value by the agents or people involved. **They** in turn would give it to me and I would in turn photograph and package it. What fell through to the next screen that was same procedure there on down the next screen was a smaller mesh and the bottom screen, best way I can describe, is about like consistency of your window screen you have in your home.

[continuing on page 1167, describing the process *outside* the crime scene]

Q: And how was the evidence actually collected inside and brought to this mechanism? [*implied: outside the house*]

A: Well **they** pretty much **what they would do** is takes these large or plastic containers and **they**'d have to use shovels or hand held and put stuff in these containers to bring it out to separate it, because a lot of times you wouldn't know what you had if you had anything until after you got it to the tables and realize, you know, what it was.

[Page 1168, lines 9-18, describing the process *outside* the crime scene]

> A: . . . And what I did in my report, I documented who was working at the tables and **who was collecting**. And what **they** would do is **bring the items** to the table to process or to look at, and those items, I had cardboard placed down on the driveway in that area there, we had vehicles moved and using the driveway area, I placed cardboard out there and labeled them as far as which room and where they were being collected. And I would spread items out on that and photograph them before I would package them.

As emphasized, Det. Godbee selected items, from those brought to him, for inclusion into an evidence container (similar to a one-gallon paint can) for later analysis. Godbee relied upon the "statements" (actions) by the other officer as to where the items were allegedly found. Petitioner requests that this Court notice the frequent use of **"they,"** where Det. Godbee is referring to other persons (who did not testify at trial!!) who brought items to him for collection and packaging.

[Page 1179, lines 15-25] [*Emphasis added*]

> Q: Detective, the exhibits from the bathroom, you were involved in all actually taking evidence out and bringing it to the sifting tables?
>
> A: No, sir, **I did not bring it to the tables**.
>
> Q: Right, but you were there when that process was done?
>
> A: I was at the tables, yes, sir.
>
> Q: So **it was brought to you** who was then taking this stuff, packaging it and making sure that evidence was known as to where it came from?

A: **Yes**, sir.

Godbee admitted he did not find the items, and merely tagged the items and/or placed them in the cans, *based on where the unknown investigators said the item(s) came from.* Jarvis had no opportunity to cross examine the officer who found the significant piece of evidence that was hotly contested at trial: an alleged piece of metal that was testified to be the "igniter" wire from a model rocketry kit, similar to one Jarvis had purchased a few weeks before.

Crawford specifically referred to such statements as testimony!

> Various formulations of this core class of "testimonial" statements exist: ex parte in-court testimony or its functional equivalent-that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial **statements that declarants would reasonably expect to be used prosecutorially**.

Crawford., 541 US at 51. [31] [*emphasis added, citations omitted*]

Certainly, an officer involved in investigating an arson involved death would expect any and all of his actions, declarations, and statements related to the investigation "would reasonably expect [his acts/words] to be used prosecutorially."

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[31] Again, Jarvis should get the benefit of *Crawford*'s analysis of what is hearsay testimony because his case was "in the pipeline" on appeal when the case was decided. The issue of non-retroactivity does not apply.

III. Question Three: Jarvis complained in post-conviction proceedings[32] regarding over thirty (30) comments[33] made by the prosecution in opening and in closing remarks – remarks which historically have been condemned, disapproved, and declared improper by appellate courts in all levels. See the subclaims under Grounds 10 and 11 (numbered as sections 14-J and 14-K) of the 3.850 Motion (Exhibit I). Yet, Jarvis's counsel at trial did not object to the objectionable comments made by either of the two prosecutors. At a post-conviction hearing, he claimed it was for "strategic" reasons that he "normally" did not object. Jarvis contends that abandoning the client's interest in the case is not strategic. Doing "nothing" is not a valid "strategy" when the results of the violations has such a negative impact on the case. The quantity of prosecution misstatements and improper statements (over two dozen were described in post-conviction motions) cumulatively affected the trial to the point that the defendant's case was impinged by the negative

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[32] See both the Fla.R.Crim.P. Rule 3.850 motion, Exhibit I , and the §2254 Petition, Exhibit F .

[33] The State's opening remarks included five such comments, the State's first closing remarks (by the same prosecutor) included eleven such comments (numbered 1 through 9, with subclaims). After the defense's closing, the State was entitled to a second closing, delivered by a co-prosecutor, who made sixteen more impermissible remarks (numbered 10 through 20, with subclaims) – for a total of at least thirty impermissible comments. See the Defendant's 3.850 motion, Exhibit I for additional details.

comments which defense counsel allowed unchallenged. Defense counsel was not acting as an effective counselor, in violation of the **Sixth Amendment** as explained in *Strickland*, *Kimmelman*, and, *Cronic* (all supra).

It has been recognized that, some arguments are so prejudicial that event the sustaining of defense objections (*which did not occur*) cannot "unring the bell," and so the prejudicial error is not attenuated.[34]

> In addressing a claim of cumulative error, "we consider all errors preserved for appeal and all plain errors in the context of the trial as a whole to determine whether the appellant was afforded a fundamentally fair trial." [U.S. v.] *House*, 684 F.3d [1173,] at 1197 [(11th Cir. 2012)] (quotation marks omitted). "The total effect of the errors on the trial will depend, among other things, on the nature and number of the errors committed; their interrelationship, if any, and combined effect; the strength of the government's case; and the length of trial." *Id.* (quotation marks and alteration omitted).

United States v. Flanders, 752 F.3d 1317 (11th Cir. 2014) [clarifications in square braces added].

In the Jarvis case, the number of errors was significant: at least **thirty**! They were interrelated within the prosecutors comments. The government's (State's) case was not particularly strong, where it relied in pyramiding of presumptions, and only circumstantial evidence.[35] The ones during second closing were especially onerous in that defense counsel had no further

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[34] *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968),

[35] There was overwhelming evidence of a murder and arson – but there was barely circumstantial evidence linking the events to Jarvis.

opportunity to rebut them at the end of trial. They were the "last bell" the jury heard, without any attempt to being "un-rung" by the trial court. The error should be considered plain, and worthy of review.

IV. Question Four: Jarvis complained that his attorney failed to perform as an effective attorney within the meaning of the **Sixth Amendment**, as described in *Strickland*, where he failed to request a judgment of acquittal which comported with the requirements of criminal law practice, including Florida Rules of Criminal Procedure, Rule 3.380. The rule requires counsel to submit a motion which "must fully set forth the grounds on which it is based." *Id.,* at (b). While the district court noted that defense counsel had orally submitted a motion for judgment of acquittal twice, Petitioner contends that both motions were mere "boilerplate," and so did not "fully set forth the grounds on which [they were] based," as defined in Florida jurisprudence. Counsel was therefore deficient according to *Strickland.*

The Eleventh Circuit stated the law correctly:

> Even assuming the appellate court's adjudication of the claim is not entitled to deference, Jarvis's ineffectiveness claim is without merit because the record supports the postconviction court's conclusion. A motion for judgment of acquittal "must fully set forth the grounds on which it is based." Fla. R. Crim. P. 3.380(b). However, Jarvis's description of Florida law goes too far. Even in a circumstantial evidence case, "the state is not required to 'rebut conclusively every possible variation' of events which could be inferred from the evidence, but only to

> introduce competent evidence which is inconsistent with the defendant's theory of events." State v. Law, 559 So. 2d 187, 189 (Fla. 1989) (footnote and citation omitted).

Exhibit E, at pages 68-69.

However, the conclusion reached by the court is unreasonable! As explained in *State v. Law*, as cited by the court, the prosecution must "introduce competent evidence which is inconsistent with the defendant's theory of events." The State introduced NO evidence inconsistent with Jarvis's theory of events: Jarvis claimed to be at home (over 40 miles away) while someone else created and delivered the explosive package. All of the evidence found at his home and other searches "linking" Jarvis to events each had innocent explanations. None of the State's evidence contradicted any element of Jarvis's theory. Each item could go "either way." Only the State's pyramiding of presumptions allowed them to leap to the conclusions they wanted – without any direct (non-circumstantial) evidence. The attorney was ineffective for not bringing this deficiency of evidence against Jarvis to the attention of the trial court to preempt the submission of the case to the jury. The ineffectiveness was in violation of *Strickland* and its progeny.

V. Question Five: The Petitioner/Defendant claimed to have been not in a place able to have committed the crimes as charged. As part of his pre-trial discussions with counsel, he described various events which precluded his

participation in the crime, and asked counsel to confirm various facts. Jarvis herein contends that counsel was deficient according to *Strickland* by his failure to properly investigate and present the alibi evidence as requested. Further, counsel failed to request the "Florida Standard Jury Instruction" regarding alibi evidence, when such evidence had been presented to the jury. Florida law requires the defense to give notice prior to trial that an alibi defense may be presented. Defense counsel complied with said rules (Fla. R. Crim. P., Rule 3.200, "Notice of Alibi"), yet failed to follow through during investigation, trial presentment, and end-of-trial stages.

VI. Question Six: Jarvis's first trial counsel was appointed for him due to his inability to hire counsel for the size of the murder/arson case against him. The Jacksonville Public Defender's Office was originally appointed to represent Jarvis for pre-trial and trial proceedings. However, a conflict arose very soon after.

During the investigation, the PD's office determined that one "A.C." was a viable alternate suspect, in that he was known to "have a temper" and had verbalized emotions of hate against the victim in the murder/arson that Jarvis had been arrested for: the death of his ex-wife. The investigators from the PD's office discovered there had been a relationship between A.C. and the ex-Mrs. Jarvis, that at one point they had both rented rooms in the same

private house, and that A.C. had threatened Mrs. Jarvis for renting an additional room he was wanting. (She was quicker.)

The major conflict came when A.C. was arrested for domestic violence charges against a newer girlfriend, in January of 2001 – just a few weeks after Mrs. Jarvis was killed (but before William Jarvis's arrest in late February). While A.C. was charged with misdemeanor assault and related charges, he was represented by the very same Jacksonville Public Defender's Office. The attorney's for Jarvis were put in a bind – they could not defend Jarvis while pointing to A.C. as a potential suspect due to conflict of interest rules. They had to withdraw as counsel of record, due to their prior representation of A.C. Private conflict counsel was appointed by the trial court for Jarvis.

At trial two years later, Jarvis's trial counsel wanted to introduce A.C.[36] as a potential suspect for the jury to hear about. The State obviously wished to avoid any mention of alternate suspects while they prosecuted Jarvis. Trial counsel obtained the presence of A.C.'s then girlfriend (and victim) to come to court at Jarvis's trial. The State argued against the testimony of K.J., arguing that it would unnecessarily confuse the jury.

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[36] Defense counsel and investigators searched off and on for A.C., who was known in the Jacksonville area. He did not have a regular home, and was working odd jobs for cash. Because of the inability to locate him, he could not be deposed or questioned by counsel before Jarvis's trial.

Defense counsel pointed out a concept of Florida jurisprudence often referred to as "reverse *Williams*[37] rule" (a variation on rule allowing "similar fact evidence"[38]). Before making a final ruling, the trial judge allowed defense counsel to proffer K.J.'s testimony outside the presence of the jury.

K.J. testified that A.C. had been stalking her in the middle and end of the year 2000 to early weeks of January 2001, that he had often made verbal threats, that he had occasionally blocked in her car with his own to prevent her from leaving the apartment, that he had actually threatened her with bodily harm, that he had left notes and items for her to discover when she happened to be not at home, and that he had access to chemicals and/or medications which have known toxic properties. In fact, he had been arrested for smashing his way into her apartment in January 2001. Photographs of her damaged door were described. This event was the one that led to A.C.'s arrest, and the Public Defender's office conflict out of Jarvis's case.

The trial judge ruled the proffer inadmissible. He commented that the events could have been used in a trial if A.C. were the one being charged, but not in Jarvis's trial. He theorized that the events were not closely enough

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[37] *Williams v. State*, 110 So.2d 654 (Fla. 1959) is the foundational case in Florida for "similar fact evidence," as permitted under the Florida Evidence Code at §90.404, Fla. Stat.

[38] This "rule" is based upon §90.404, Fla. Stat., which is substantially identical to Federal Rules of Evidence Rule 404.

similar to events related to Jarvis's case, despite that witnesses had described Jarvis as following his wife, as having left threatening items when she was not at home, that he appeared at locations where she was and didn't want to socialize with him, and that these events were in mid and late 2000. The biggest error in the judge's explanation (at the October 2003 trial) was that the A.C. events were too remote in time to be relevant. They were contemporaneous with the events leading to the death of ex-Mrs. Jarvis.

The evidence presented in the proffer was timely (events which occurred within days of the crime Jarvis was accused of), similar (the victim was stalked and threatened by a former paramour), and significant (the alternate suspect had the demonstrated bad temper and access to tools convenient to commit murder). In actuality, the alternate suspect went so far as to physically batter his victim (the witness being proffered), and smashed open her residence door in order to access and assault the testifying victim.

Holmes[39] stood for the proposition that court rules that limited the introduction of evidence against a third party may be constitutionally deficient.

"The point is that, by evaluating the strength of only one party's evidence [such as the State], no logical conclusion can be reached regarding

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[39] *Holmes v. South Carolina,* 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)

the strength of contrary evidence offered by the other side [the defense] to rebut or cast doubt. ... The rule [excluding the evidence of third-party guilt] therefore violated a criminal defendant's right to have a meaningful opportunity to **present a complete defense**." *Id.* 547 U.S. at 331 [quotes and internal citations omitted, clarification and emphasis added].

VII. Question Seven: This question was answered by the district court below in the correct fashion, but then failed to apply the results properly. As the cases were considered by the magistrate judge, there is no controversy for this Court on this matter.

CONCLUSION

For the reasons explained above, Petitioner Jarvis has explained that the Middle District of Florida incorrectly decided the issues legally raised in the Petition for Writ of Habeas Corpus, and the Eleventh Circuit Court of Appeals incorrectly denied Certificate of Appealability on the Constitutional issues presented.

RELIEF REQUESTED

Petitioner hereby requests this Honorable Court to grant Certiorari on the issues described, and/or to reverse the matter to the Eleventh Circuit with instructions that Jarvis be granted the Writ of Habeas Corpus due to the plethora of Constitutional violations suffered in the proceedings below, and/or any other relief as this Honorable Court may see fit as just, reasonable and proper.

Respectfully submitted, this 13th, day of November, 2023.

/s/ William Jarvis

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