

**AUG 27 2004**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AARON E. HOWERTON,  
  
Petitioner - Appellant,  
  
v.  
  
SANDRA CARTER,  
  
Respondent - Appellee.

No. 03-35824

D.C. No. CV-02-01414-RSL

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert S. Lasnik, District Judge, Presiding

Submitted August 4, 2004\*\*  
Seattle, Washington

Before: HALL, KLEINFELD, and CALLAHAN, Circuit Judges.

To warrant habeas relief, Howerton must show that the state court's  
decision was "contrary to, or involved an unreasonable application of, clearly

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

established Federal law, as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1).

Howerton contends that the trial court erred by excluding a key witness’s prior inconsistent statements, which were offered for impeachment purposes. The Washington Court of Appeals decision is not contrary to, or an unreasonable application of, any of the Supreme Court cases he cites or any that we have found. Howerton’s counsel impeached the credibility of the witness with other questions, and the excluded testimony was inadmissible hearsay. *Taylor v. Illinois*, 484 U.S. 400, 410, 414–15 (1988).

Howerton also argues that prosecutorial misconduct deprived him of a fair trial. The state court decision is not contrary to or an unreasonable application of *Darden v. Wainwright*, 477 U.S. 168 (1986), because the statements did not “infect[] the trial.” *Id.* at 181 (quoting *Donnelley v. DeChristoforo*, 416 U.S. 637, 643 (1974)). The trial judge specifically instructed the jury not to rely upon the lawyers’ arguments when weighing the evidence and determining credibility. *See Greer v. Miller*, 483 U.S. 756, 766 n.8 (1987).

**AFFIRMED.**