ORIGINAL

No. 18-7167

In The
Supreme Court of the United States
_____ Term, 2018

Cornelius Kirsh — Appellant

v.

STATE OF LOUISIANA — Appellee(s)

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

Cornelius Kirsh #581530
MPWY/Oak-1
La. State Penitentiary
Angola, LA 70712

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QUESTION(S) PRESENTED

1. **Whether reasonable jurist would debate that the State failed to meet its burden of proof of beyond a reasonable doubt that Mr. Kirsh is guilt.**
2. **Reasonable jurists would determined that Mr. Kirsh's convictions for Attempted Aggravated Obstruction of a Highway of Commerce and Aggravated Flight from an Officer would violate the prohibition against Double Jeopardy.**
3. **Whether reasonable jurists would determine that it was reversible error for the district court to permit Mr. Kirsh's involuntary statements that were the product of duress, inducements, and/or promises to be presented to the jury, over defense counsel's objections.**

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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.

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TABLE OF CONTENTS: Page

INDEX TO APPENDICES AND EXHIBITS

TABLE OF AUTHORITIES: Page

U.S. CONSTITUTION:

FEDERAL CASES:

LOUISIANA CONSTITUTION:

STATUTORY PROVISIONS:

STATE CASES:

MISCELLANEOUS:

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the United States Court of Appeals 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[ ] is unpublished.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 United States district 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[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix "E" to the petition and is the Louisiana Supreme Court in Docket Number 2017-KO-2169.

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[ ] is unpublished.

The opinion of the First Circuit Court of Appeal appears at Appendix "C" to the petition and is

[X] reported at 237 So.3d 598 (La. App. 5th Cir. 12/27/17); 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 _____.

[ ] 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. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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

The date on which the highest state court decided my case was November 14, 2018.
A copy of that decision appears at Appendix "E".

[ ] 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This conviction was obtained in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Specifically, Mr. Kirsh was denied the right to a fair and impartial trial with the district court allowing the jury to view the drawings (with testimonial evidence) during deliberations.

NOTICE OF PRO-SE FILING

Mr. Kirsh requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Mr. Kirsh is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

REASONS FOR GRANTING THE PETITION

In accordance with this Court's *Rule X, § (b) and (c)*, Mr. Kirsh presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

STATEMENT OF THE CASE AND ACTION OF TRIAL COURT

On August 14, 2015, Cornelius Kirsh was convicted of Attempted Aggravated Obstruction of a Highway of Commerce and Aggravated Flight from an officer. On September 28, 2015, the State filed a Multiple Offender Bill of Information seeking to sentence Mr. Kirsh to life imprisonment. On January 14, 2016, Mr. Kirsh filed an Objection to the State's Multiple Offender Bill of Information. On March 31, 2016, the Court ruled that Mr. Kirsh had been convicted of felony offenses as set forth in the Multiple Offender Bill of Information and adjudicated him as a Second Felony Offender as to Aggravated Flight From an Officer and sentenced him to four (4) years DOC. On June 21, 2016, the State filed a second Multiple Offender Bill of Information regarding the same matter and argued that Mr. Kirsh is a Third Felony Offender on the same basis as the first Multiple Offender Bill of Information on September 28, 2015. On October 7, 2016, Mr. Kirsh filed a Motion to Quash the Multiple Offender Bill of Information. That motion was denied and the trial court deemed Mr. Kirsh a Third Felony Offender. On October 17, 2016, Mr. Kirsh was sentenced to life in prison.

On April 3, 2017, Mr. Kirsch's retained counsel, Peter "Q" John, timely filed the Original Brief on Appeal to the Louisiana First Circuit Court of Appeals. On April 11, 2017, Mr. Kirsch timely filed his Motion for Leave to File Supplemental Brief on Appeal. On June 8, 2017, Mr. Kirsch timely filed his Pro-Se Supplemental Brief on Appeal.

On November 1, 2017, the Louisiana First Circuit Court of Appeals affirmed Mr. Kirsch's convictions, Habitual Offender Adjudication, and sentences. Although the ruling was dated for November 1, 2017; and although the letter from retained counsel was dated November 3, 2017 (See: Exhibit "A"), the envelope is post-marked for November 22, 2017, and stamped "Received" by the Louisiana State Penitentiary Mail Room on November 27, 2017 and November 30, 2017 (See: Exhibit "B"). november 20, 2018

On December 6, 2017, Mr. Kirsh filed his Application for Writs of Certiorari to the Louisiana Supreme Court. On November 20, 2018, the Louisiana Supreme Court denied relief and affirmed Mr. Kirsh's convictions and sentence. This timely Petition for Habeas Corpus now follows, and Mr. Kirsh requests this Honorable Court to grant him relief for the following reasons to wit:

STATEMENT OF THE FACTS

On Wednesday, July 30, 2014, at approximately 1550 hours, Officer Brad Hoops and Officer Donald Nunez were dispatched to the area of Walnut Street and Beechwood Drive in reference to a suspicious vehicle. Officers were advised of an alleged disturbance involving a subject with a gun. Officers were advised that allegedly shots had been fired from a white vehicle.

As officers were arriving in the area, they were advised that the vehicle was traveling north on Walnut Street. Officer Hoops was traveling south on Walnut Street and observed a white vehicle. Allegedly, the vehicle accelerated and turned left on Beechwood Drive, leaned heavily on the driver side, and accelerated again. Officer Hoops testified that as he approached the corner to turn, the vehicle was allegedly traveling at a high rate of speed. Officer Hoops then attempted to catch up with the vehicle. When Officer Hoops made the curve, the vehicle came to a stop, a black male bailed out of the rear passenger side of the vehicle and ran toward 565 Beechwood Drive. As he was running, he was allegedly concealing a large, heavy object in his front waistband area.

Officer Hoops diverted from chasing the male to assist Officer Nunez who was holding two subjects in the vehicle at gunpoint. Officers Hoops took the driver and front passenger into custody, and testified that he allegedly detected a strong odor of burnt gunpowder emitting from the vehicle. Officer Hoops requested more officers to assist in the search of the subject who fled. Officer Jason Seals, who arrived on the scene, and Officer Hoops went to check the residence where the fleeing subject entered. Officers found the front door unlocked and the rear window wide open.

Officer Seals held his position at the rear of the residence while Officer Hoops went to the complex to speak with the manager/owner, Mrs. Terri McGovern, who had called 911. She stated that she received a call about a disturbance on the corner of Walnut and Beechwood and that guns were allegedly involved. Mrs. McGovern stated that several moments later she and a coworker allegedly heard a single gunshot.

Mrs. McGovern called the person who contacted her about the disturbance who advised that they wished to remain anonymous before speaking with the police. The anonymous complainant advised that two subjects, Renaldo Bartholomew and Jasmine Keith Kirsh began to argue near Walnut and Beechwood. The anonymous complainant advised that two subjects, Renaldo Bartholomew and Jasmine Keith Kirsh began to argue near Walnut and Beechwood. The anonymous complainant advised that Jasmine Kirsh is the brother of Cornelius Kirsh. The complainant allegedly heard one of the subjects saying he was going to get his gun and shoot at which time both subjects ran from the area. Jasmine Kirsh was then allegedly picked up by a white vehicle on Walnut near Highway 190. The complainant did not witness anyone in possession of a gun and believed that the argument was over Jasmine Kirsh's girlfriend. Subsequently, Mr. Cornelius Kirsh was arrested and charged with Reckless Operation of a Motor Vehicle, No Driver's License, and Windshield Obstruction.

STANDARD OF REVIEW

In *State v. Ashley*, 33,880, at *3 (La. App. 2nd Cir. 10/04/00), 768 So.2d 817, 819, the Court noted that, "the accused may be entitled to an acquittal ... if a rational trier of fact viewing the evidence in accord with *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the elements of the offense have been proven beyond a reasonable doubt."

In *State v. Beaner*, 42,532, at *14 (La. App. 2nd Cir. 12/5/07), 974 So.2d 667, 675-76, this Court

noted that, "[b]efore the State can introduce any inculpatory statement made in police custody, it bears the heavy burden of establishing that ... [the defendant] received a ***Miranda*** warning and that the statement was freely and voluntarily made, and not the product of fear, duress, intimidation, menaces, threats, inducements or promises." Further, the ***Beaner*** Court noted that, "[a]t a suppression hearing, the State bears the burden of proving beyond a reasonable doubt the free and voluntary nature of the confession." *Id.* Of course, "[v]oluntariness is determined on a case-by-case basis, under a totality of the circumstances standard." 42,532, at *15, 974 So.2d at 676.

LAW AND ARGUMENT

ISSUE NO. 1

The State failed to prove the essential element of the crime of Aggravated Flight From an Officer or Attempted Aggravated Obstruction of a Highway of Commerce beyond a reasonable doubt and as such there was insufficient evidence to support the convictions.

At the trial of this matter, the State argued that Mr. Kirsh intentionally refused to stop his vehicle because he was trying to flee officers after allegedly being involved in an incident involving a firearm. However, the State failed to prove that Mr. Kirsh was involved in any incident whatsoever involving a firearm. The State further argued that Mr. Kirsh knew that the circumstances of him refusing to stop placed human beings in serious danger while he was operating his vehicle.

Yet, Mr. Kirsh was simply driving his vehicle to his sister's house at a speed that was less than twenty-five miles over the speed limit and without colliding with any vehicle or forcing a vehicle off the road.

Additionally, the State did not provide any witnesses that stated that he failed to obey stop signs and signals. As such, Mr. Kirsh was allegedly fleeing the police in an aggravated manner as suggested by the State.

When reviewing the sufficiency of the evidence, the appellate court must review under the standard of regardless of whether the question was raised as a motion for a Post-Verdict Judgment of Acquittal

or as an Assignment of Error from a holding of the trier of fact. La.C.Cr.P. Art. 821; *State v. Korman*, 439 So.2d 1099 (La. App. 1st Cir. 1983).

In *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), the United States Supreme Court set out the standard by which appellate courts are to review the sufficiency of the evidence in criminal proceedings:

> ... the relevant question is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Also see: *State v. Matthews*, 375 So.2d 1165 (La. 1979). In reviewing the sufficiency of the evidence to support a criminal conviction, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the court to determine whether the evidence is minimally sufficient beyond a reasonable doubt.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects persons accused of a crime against conviction unless the State proves every element of the offense beyond a reasonable doubt. *In re: Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).[1]

In *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 60 (1979), the United States Supreme Court reached the legal standard of review, *i.e.*, ". . . whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt ..." In the court's view, the factfinder's role as weigher of evidence was preserved by considering all of the evidence in the light most favorable to the prosecution: ". . . The criterion thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law." *Jackson*, 443 U.S. at 319, 99 S.Ct., at 2790, 61 L.Ed.2d at 573-574. This standard is applied with "explicit reference to the substantive

1. This type of error has been recognized as patent error preventing conviction for the offense, La.C.Cr.P. Art. 920(2), see indicative listing at State v. Guillot, 200 La. 935, 9 So.2d 235, 239 (1942). Quoting: State v. Crosby, 338 So.2d 584, 588 (La.1976).

elements of the criminal offense as defined by state law." *id. at* 324 n. 16, 99 S.Ct. at 2791 n. 16. *Dupuy v. Cain*, 210 F.3d 582 (5th Cir. 2000).

The deferential standard of review, whereby reviewing courts must affirm a conviction if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, does not permit the type of fine-grained factual parsing necessary to determine that the evidence presented to the factfinder was in "equipoise," and that therefore reversal of the conviction is warranted; abrogating *United States v. Jaramillo*, 42 F.3d 920, *United States v. Ortega Reyna*, 148 F.3d 540, *United States v. Penaloza-Duarte*, 473 F.3d 575, and, *United States v. Stewart*, 145 F.3d 273. **Criminal Law Key 110k1159.2(1).**

Courts reviewing a conviction are empowered to consider whether the inferences drawn by a jury were rational, as opposed to being speculative or insupportable, and whether the evidence is sufficient to establish every element of the crime. **Criminal Law Key 110k1159.2(8).**

The *Jackson* standard, which has been repeatedly reaffirmed by the Supreme Court, may be difficult to apply to specific cases but is theoretically straightforward. In contrast, the "equipoise rule" is ambiguous. At one level, whether it applies only to cases ungirded by circumstantial evidence, as opposed to direct or circumstantial evidence, is not entirely clear. Moreover, no court opinion has explained how a court determines that evidence, even when viewed most favorably to the prosecution, is "in equipoise." Is it a matter of counting inferences or of determining qualitatively whether inferences equally support a theory of guilt or innocence?

In any event, when appellate courts are authorized to review verdicts of conviction for evidentiary "equipoise," they must do so on a cold appellate record without the benefit of the dramatic insights gained from watching the trial. The potential to usurp the jury's function in such circumstances is

inescapable. *Jackson*'s "deferential standard" of review, however, "does not permit the type of fine-grained parsing" necessary to determine that the evidence presented to the factfinder was in "equipoise." *Compare*: *Coleman v. Johnson*, 132 S.Ct. 2060, 2064, 182 L.Ed.2d 978 (2012).

Jackson also "unambiguously instructs that a reviewing court, 'faced with a record of historical facts that supports conflicting inferences must presume - - even if it does not affirmatively appear in the record - - that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'" *Cavazos v. Smith*, 132 S.Ct. 2, 6, 181 L.Ed.2d 311 (2011).

A complete reading of the transcript of this trial shows that the State failed to meet the burden of proof enunciated by the Supreme Court in *Jackson v. Virginia*. In *State v. Dixon*, 620 So.2d 904 (La. App. 1st Cir. 1993), the First Circuit explained:

> "The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt."
>
> The rule regarding circumstantial evidence is set forth in LSA-R.S. 15:438 as follows:
>
> "... assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence."

Ultimately, all the evidence in the record, viewed in a light favorable to the State, must satisfy the reviewing court that a rational trier of fact could have found the defendant guilty of the crime for which he was convicted, beyond a reasonable doubt. *State v. Perow*, 616 So.2d 1336 (La. App. 3rd Cir. 1993).

The circumstantial evidence rule is a component of this reasonable doubt standard. On appeal, the issue is whether a rational trier of fact, viewing the evidence in a light most favorable to the State, could find that all reasonable hypothesis of innocence were excluded. *Jackson v. Virginia*, supra.

In this case, Mr. Kirsh was convicted of Aggravated Flight From an Officer and Attempted Aggravated Obstruction of a Highway. Aggravated Flight From an Officer, in pertinent part, is the

intentional refusal of a driver to stop ..., under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver or operator has committed an offense.

Aggravated Flight From an Officer:

LSA-R.S. 14:108.1 specifically states that, "No driver of a motor vehicle or operator of a watercraft shall **intentionally refuse to bring a vehicle or watercraft to a stop KNOWING that he has been given a visual and audible signal to stop by a police officer** when the officer has reasonable grounds to believe that the driver has committed an offense" (**emphasis added**).

The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle. LSA-R.S. 14:108.1(C), pursuant to LSA-R.S. 14:108.1(D), in pertinent part, circumstances wherein human life is endangered, shall be any situation wherein the operator of the fleeing vehicle commits at least two of the following acts:

(1) Leaves the roadway or forces another vehicle to leave the roadway.
(2) Collides with another vehicle or watercraft.
(3) Exceeds the posted speed limit by at least twenty-five miles per hour.
(4) Travels against the flow of traffic or operates the vehicle in a reckless manner in violation of R.S. 14:99.
(5) Fails to obey a stop sign or a yield sign.
(6) Fails to obey a traffic control signal device.

It appears as though the State was attempting to submit evidence that Mr. Kirsh had; (1) left the roadway; and, (3) exceeded the posted speed limit by at least twenty-five miles per hour. However, the State has failed to submit sufficient evidence of either of these elements of Aggravated Flight From an Officer.

First and foremost, the State has failed to submit sufficient evidence that Mr. Kirsh was given a visual and audible signal to stop by a police officer. This should be given extra consideration due to the fact that Mr. Kirsh was traveling "towards" the officer, and was not given any type of notice that the

officer was attempting to stop him, or to have him pull over. It simply appeared as though Mr. Hoops was headed in the direction that Mr. Kirsh had come from. No evidence has been presented which would show that Mr. Kirsh was aware, or would have been aware, that Mr. Hoops was attempting to have him pull over to the side of the street prior to being stopped by Officer Nunez.

It must also be noted that the State failed to submit any evidence, other than Mr. Hoops testimony, that the actual speed limit in that vicinity was 20 miles per hour. Even though Mr. Hoops testified that he was presently working at Dow Chemicals, instead as an officer, he failed to submit anything as evidence of the speed limit.

The State relied heavily (if not, solely) on the testimony of Mr. Bradford Hoops in order to obtain the conviction of Aggravated Flight From an Officer. Mr. Hoops testified that Mr. Kirsh was traveling at a "high rate" of speed towards him while his lights and siren were activated (Rec.p. 483).

Mr. Hoops also testified that it "appeared" that Mr. Kirsh's vehicle had left the roadway, and that it had hit the curb (but it made a bump) and continued on its way (Rec.p. 483). **Note**: Mr. Hoops' testimony only consisted of "appeared" to leave the roadway; not that Mr. Kirsh's vehicle had left the roadway.

Although Mr. Hoops had testified that the speed limit on that particular street was 20 miles per hour, the State failed to submit evidence of such during the course of this trial (Rec.p. 484).

When questioned as to whether Mr. Kirsh would have known that Mr. Hoops was attempting to pull him over, Mr. Hoops responded, "I don't know. That's a question for Mr. Kirsh." Simply put, Mr. Hoops wasn't sure whether Mr. Kirsh was aware of the fact that Mr. Hoops was attempting to pull him over.

The State alleged that Mr. Kirsh was traveling at a high rate of speed. However, Officer Donald Nunez testified that Mr. Kirsh was traveling approximately forty (40) to forty-five (45) miles per hour (Rec.p. 424). The posted speed limit on the street was twenty (20) miles per hour, which is at most

twenty (20) miles per hour lower than the rate of speed Mr. Kirsh was allegedly traveling. Officer Nunez did not testify that Mr. Kirsh was traveling more than twenty-five (25) miles per hour more than the speed limit. Of importance, the State provided no radar readings indicating the speed in which Mr. Kirsh was traveling.

Although the officers alleged that Mr. Kirsh was traveling in the imposing lane, it should be noted that this only occurred when Mr. Kirsh was turning onto Beechwood Street. In fact, Officer Nunez testified that he only traveled in the opposing lane approximately 150 to 200 feet after making the turn. If Mr. Kirsh was actually trying to flee from the officers, he could have kept driving and at a higher rate of speed than 40-45 miles per hour to attempt to escape from the police. However, he did not because he was not fleeing the police and was only traveling to his sister's house.

One of the most important issues presented by the State during the course of the testimony of Brad Hoops (ex-officer of the Slidell Police Department), is the fact that his testimony consisted of the fact that he had taken Radar Class in the Police Academy (Rec.p. 496). Radar Classes would be used to properly train an officer how to properly tune and use the radar equipment during the course of their jobs, not to judge speeds without the use of such.

It's simply amazing that Mr. Hoops would be able to accurately judge the speed of an on-coming vehicle which he had observed for about three to five seconds (without the use of a radar)(Rec.p. 496).

Mr. Hoops also testified that although he considered Mr. Kirsh traveling in excess of the speed limit, he had never caught up with Mr. Kirsh's vehicle to accurately determine the rate of speed that Mr. Kirsh was traveling (Rec.p. 493), but when Mr. Kirsh stopped, he wasn't far behind him (Rec.p. 494). The question must be presented that since Mr. Hoops testified that he didn't travel at a rate of more than 30 miles an hour over the speed limit, how could there be no time difference between Mr. Kirsh stopping and Mr. Hoops arriving, especially when Mr. Hoops testified that he was traveling

approximately 20 miles an hour (Rec.p. 494)?

Mr. Hoops testified that he had **not** been directly behind Mr. Kirsh in order to "pace" the vehicle in order to determine an "estimated" rate of speed; only that he had "judged" Mr. Kirsh's speed while Mr. Kirsh was traveling towards his unit. Mr. Hoops further testified that he had witnessed Mr. Kirsh's vehicle traveling at least 30 miles over the speed limit, travel against traffic, and leave the roadway (previously, Mr. Hoops had testified that it "appeared" as though Mr. Kirsh had left the roadway) (Rec.p. 486).

According to the testimony of Mr. Hoops, this "chase" had taken place for only a "few seconds, not long" (Rec.pp. 494-5). Furthermore, Mr. Hoops' testimony failed to include any testimony of whether he had actually used his radar in order to determine the rate of speed Mr. Kirsh was traveling during this incident.

Mr. Hoops had testified that Mr. Kirsh had failed to respond to the lights and siren at this time. (Rec.p. 487). However, Mr. Hoops **never** testified to the fact that he had signaled for Mr. Kirsh to pull over. This is clear due to the fact that Mr. Hoops was **never** behind Mr. Kirsh until after Mr. Kirsh had stopped in front of his sister's home.

Mr. Hoops also testified that Mr. Kirsh was required, by law, to pull to the right and stop (Rec.p. 498). However, after a review of LSA-R.S. 32:125, Mr. Kirsh would like this Court to note that 32:125 states in pertinent part:

> **§ 125. Procedure on approach of an authorized emergency vehicle; passing a parked emergency vehicle.**
>
> A. Upon the immediate approach of an authorized emergency vehicle making use of audible or visual signals, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way ...

Mr. Hoops' own testimony shows that Mr. Kirsh was traveling towards the officer's vehicle, and that Mr. Kirsh's vehicle **did not impede the right-of-way** of the officer's vehicle at any time while Mr.

Hoops was passing by Mr. Kirsh's vehicle in the other lane.

The State was unable to provide any evidence that Mr. Kirsh intentionally refused to bring his car to a stop or that he intentionally or negligently placed any person in harm. The State alleges that Mr. Kirsh had the intent of fleeing from the officers because he allegedly was involved in an incident involving a firearm. However, at no time was Mr. Cornelius Kirsh identified as the individual with a firearm.

The State provided no evidence whatsoever that Mr. Kirsh had knowledge of the alleged shooting that occurred. In fact, Officer Nunez testified at the trial that he could smell the strong odor of gunfire, gun powder, burnt gun powder (Rec.p. 424). Ironically, no gunpowder residue was recovered from Mr. Kirsh or the vehicle. Mr. Kirsh has maintained that he never had a gun and that he only gave that person who fled the vehicle upon stopping at his sister's house a ride because he asked. Mr. Kirsh maintained throughout these proceedings that he did not know the individual at all. The State is punishing Mr. Kirsh as a result of him being a kind individual who gave a person in the neighborhood a ride down the street.

The fact is Mr. Kirsh brought is car to a stop after realizing that the officers were signaling for him to pull over. The officer who was allegedly in pursuit of Mr. Kirsh's vehicle was not following behind his vehicle until right before he stopped his vehicle. Officer Hoop's vehicle was driving towards Mr. Kirsh's vehicle on the street, therefore it is reasonable to believe that Mr. Kirsh did not believe he was being signaled to stop until Officer Hoops turned around and followed behind him; at which point, he came to a stop.

Additionally, Officer Nunez testified that Mr. Kirsh pulled over and stopped his vehicle after turning down Beechwood Street, which was approximately one (1) or (2) seconds after getting behind Mr. Kirsh's vehicle with the lights and sirens on (Rec.pp. 440, 449).

Of importance, it should be noted that Mr. Kirsh was not fleeing police; but instead was turning down the street to go to his sister's home, which is where he stopped the vehicle. As such, Mr. Kirsh was not avoiding the officer coming in his direction by turning down the street, he was simply traveling in the direction that he originally intended on going.

Furthermore, Mr. Kirsh never intentionally or acted negligently to the point of placing any adult or children in danger of serious harm. As previously stated, Mr. Kirsh did not see any children outside on in the street prior to turning down Beechwood Street. More importantly, after Mr. Kirsh turned down Beechwood Street, he came to a stop outside of his sister's house within two (2) seconds of turning down the street. No children were seen playing in the street. The State offered no evidence and/or testimony that any child was almost harmed by the vehicle. The State provided no evidence and/or testimony indicating that the children were even close to the edge of the street where their lives could have been in danger.

The States was required to show that Mr. Kirsh intentionally refused to stop his vehicle under which human life was endangered and that he intentionally or negligently placed human life in danger; however, they did not do so through the testimony of the officers. In fact, the State failed to provide any evidence whatsoever that Mr. Kirsh had the intent not to stop. Mr. Kirsh stopped his vehicle after turning on to Beechwood Street and realizing that the officer was following him.

It is unreasonable for the officers to believe that the officer traveling in the opposite direction towards Mr. Kirsh was signaling him to pull over when Mr. Kirsh knew he not commit a crime whatsoever. Additionally, Mr. Kirsh did not exceed twenty-five (25) miles per hour over the posted speed limit and only allegedly traveled in the wrong direction for a short distance. The State failed to provide any evidence that Mr. Kirsh committed at least two of the required elements to show that human life was endangered. Accordingly, the evidence was insufficient in this case to support the

requisite elements of Aggravated Flight From an Officer.

Additionally, the State failed to prove that Mr. Kirsh committed at least two (2) of the required elements to show that he endangered human life while operating the vehicle when allegedly fleeing from the officers. The State provided no evidence and/or testimony to show that Mr. Kirsh failed to obey a stop sign or yield sign. The State failed to provide any evidence and/or evidence that Mr. Kirsh collided with another vehicle. The State failed to provide any evidence and/or testimony to show that Mr. Kirsh left the roadway or forced another vehicle to leave the roadway.

One of the most important issues that was raised during the trial was the fact that Mr. Hoops steadfastly testified that there were approximately 30 children in the area during this incident (Rec.pp. 484, 492-94), and that he did not want to injure any of them during this chase. However, the surveillance video of the area which was shown to the jury of the same time frame fails to corroborate his testimony of numerous (approximately 30) children being in the area. It appears as though this testimony was to persuade the jury to convict Mr. Kirsh on the "sympathy" issue that Mr. Kirsh had "allegedly" placed children's lives in danger during this incident due to the fact that the State had failed to meet its burden of proof beyond a reasonable doubt that Mr. Kirsh had committed Aggravated Flight From an Officer.

Aggravated Obstruction of a Highway or Commerce:

LSA-R.S. 14:96 provides that Aggravated Obstruction of a Highway of Commerce is the intentional or criminally negligent placing of anything or performance of any act on any railway, railroad, navigable waterway, road, highway, thoroughfare, or runway of an airport, wherein it is foreseeable that human life might be endangered.

The testimony adduced during the trial proved that Mr. Kirsh was "parking" his vehicle in front of his sister's home at the time that the officers had accused him of this violation. It is quite normal for

visitors to park their cars on the side of the road, heading their vehicle in either direction due to the fact that this road is seldom traveled, and it would not be foreseeable that human life might be endangered.

LSA-R.S. 14:27 defines "attempt" as any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

ISSUE NO. 2

Mr. Kirsch's convictions have subjected him to Double Jeopardy.

The Fifth Amendment to the United States Constitution provides, in pertinent part, "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb ..." Correspondingly, Article I, § 15 of the Louisiana Constitution of 1974 provides, "No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a Motion in Arrest of Judgment is sustained."

The federal guarantee, made applicable to the states in ***Benton v. Maryland***, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969), embodies the dual protection: against multiple prosecutions and against multiple punishments for the same offense.

In ***North Carolina v. Pearce***, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other one does not. ***Brown v. Ohio***, 423 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977); ***Blockburger v. United States***, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (1932); ***State v. Coody***, 448 So.2d 100 (La. 1984); ***State v. Doughty***, 379 So.2d 1088 (La. 1980).

In applying the distinct factor test, there is only one offense in this matter because the evidence

required to support a conviction of Aggravated Flight from an Officer is sufficient to warrant a conviction of Attempted Aggravated Obstruction of a Highway.

Aggravated Flight From an Officer, in pertinent part, is the intentional refusal of a driver to bring a vehicle to a stop ..., under circumstances wherein human life is endangered; knowing that he has been given a visual and audio signal to stop by a police officer when the officer has reasonable grounds to believe that the driver or operator has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle. LSA-R.S. 14:108.1(C).

Pursuant to LSA-R.S. 14:108.1(D), in pertinent part, circumstances wherein human life is endangered, shall be any situation wherein the operator of the fleeing vehicle commits at least two of the following acts:

(1) Leaves the roadway or forces another vehicle to leave the roadway;
(2) Collides with another vehicle or watercraft;
(3) Exceeds the posted speed limit by at lease twenty-five miles per hour;
(4) Travels against the flow of traffic, or operates the vehicle in a reckless manner in violation of LSA-R.S. 14:99;
(5) Fails to obey a stop sign or a yield sign;
(6) Fails to obey a traffic signal device.

Additionally, LSA-R.S. 14:96 provides that Aggravated Obstruction of a Highway of Commerce is the intentional or criminally negligent placing of anything or anything of performance of any act on any railway, railroad, navigable waterway, road, highway, thoroughfare, or runway of an airport, wherein it is foreseeable that human life might be endangered.

LSA-R.S. 14:27 defines "attempt" as any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

In the present case, for the sake of this argument, since Mr. Kirsh was the driver of the vehicle, the

evidence wherein human life may be endangered was cited to proving Aggravated Flight From an Officer as well as Attempted Aggravated Obstruction of a Highway.

No additional fact, beyond that necessary to prove the Aggravated Flight From an Officer was required to warrant a conviction for Aggravated Flight From an Officer. Since it is necessary to prove that Mr. Kirsh intentionally refused to stop driving a vehicle on a roadway when given a visual and audible signal to stop wherein human life was endangered, proof of no additional facts was required to convict Mr. Kirsh of Attempted Aggravated Obstruction of a Highway without proof of any additional facts. Accordingly, there was only one offense and the multiple convictions and sentences constitute Double Jeopardy.

A. Mr. Kirsh's conviction for Attempted Obstruction of a Highway should be vacated, while both sentences should be vacated:

As state above, the evidence which warranted a conviction of Aggravated Flight From an Officer was sufficient to warrant a conviction of Attempted Aggravated Obstruction of a Highway without proof of any additional facts. As such, the convictions violate the prohibition against Double Jeopardy.

Where multiple punishment has been erroneously imposed, the proper appellate procedure is to eliminate the effect of the less severely punishable offense. ***State v. Doughty***, supra, 379 So.2d at 1091, and cases cited therein.

Pursuant to LSA-R.S. 14:108.1(E), in pertinent part, "whoever, commits Aggravated Flight From an Officer shall be imprisoned at hard labor for not more than five years and may be fined not more than two thousand dollars." Whereas, pursuant to LSA-R.S. 14:96(B), "whoever commits the crime of Aggravated Obstruction of Highway of Commerce shall be imprisoned with or without hard labor, for not more than fifteen years."

Where the crime is an "Attempt," he shall be fined or imprisoned, or both, in the same manner as for the offense attempted; such fine or imprisonment shall not exceed one-half of the largest fine, or

one-half of the longest term of imprisonment prescribed for the offense so attempted, or both." LSA-R.S. 14:27.

Clearly, the offense of Aggravated Flight From an Officer is less severely punishable than Attempted Aggravated Obstruction of a highway considering, Aggravated Flight From an Officer carries a punishment of no more than five (5) years and Attempted Obstruction of a Highway carries a sentence of seven and one-half (7 ½) years.

Accordingly, Mr. Kirsh's conviction for Attempted Obstruction of a Highway should be affirmed, and his conviction for Aggravated Flight From an Officer should be vacated. Mr. Kirsh is attacking the entire plan of punishment imposed in violation of the Double Jeopardy prohibitions.

B. Mr. Kirsh's adjudication and sentence as a Third Felony Habitual Offender should be vacated:

As stated above, Mr. Kirsh's conviction for Attempted Aggravated Obstruction of a Highway should be affirmed as it is more severely punishable than the offense of Aggravated Flight From an Officer. Given that the State filed its Habitual Offender Bill of Information based on Mr. Kirsh's conviction for ago, and the district court adjudicated Mr. Kirsh as a Third Felony Offender, Mr. Kirsh's adjudication should be vacated because the conviction was in violation of the prohibition against Double Jeopardy.

If said conviction is in violation of the prohibition of Double Jeopardy said conviction should not be the basis for the Defendant's adjudication as a Habitual Offender.

It is not the Defendant's fault that the State based its Habitual Offender Bill of Information on a less severely punishable offense, and as such, he should not be more severely punished on a conviction that was clearly in violation of the prohibition against Double Jeopardy.

Furthermore, as previously stated, Mr. Kirsh is attacking the entire plan of punishment imposed in violation of the Double Jeopardy prohibitions, and as such, all sentences should be vacated, or in the

alternative, Mr. Kirsh's original sentence under the conviction of Attempted Aggravated Obstruction of a Highway should be reinstated as he was given the most severe sentence allowed for said conviction.

SUMMARY

There was a lack of evidence to support a guilty verdict of Aggravated Flight From an Officer when Mr. Kirsh did not intentionally refuse to stop his vehicle considering he stopped within seconds of turning down the street after realizing the officers were behind him.

Mr. Kirsh contends that "jurists of reason" would not have found him guilty of the offenses of Aggravated Flight From an Officer and Attempted Aggravated Obstruction of a Highway of Commerce. Mr. Kirsh would request that this Honorable Court also note that this is the same jury which had convicted him of Possession of a Firearm by a Person Convicted of a Felony; which charge had been remanded by the district court for a new trial during Post-Trial motions.

The fact that this same jury found Mr. Kirsh guilty of the firearm charge, could have been also mistaken in finding Mr. Kirsh guilty of the Aggravated Flight From an Officer charge, and guilty of Attempted Aggravated Obstruction of a Highway of Commerce (a responsive verdict of the originally charged, Aggravated Obstruction of a Highway of Commerce).

The State's evidence failed to support the convictions of Aggravated Flight From an Officer and Attempted Aggravated Obstruction of a Highway of Commerce for the following reasons to wit:

The State failed to prove the posted speed limit of the area that the officer testified as to 20 miles an hour. The State also failed to prove that Mr. Kirsh had exceeded the speed limit by at least 25 miles per hour; and that Mr. Kirsh's vehicle had "left the roadway" at any time. Simply put, the State failed to submit evidence which would support the convictions of Aggravated Flight From an Officer and Attempted Aggravated Obstruction of a Highway Commerce.

It also appears as though the State, through the testimony of the officer(s) attempted to play on the

jury's sympathy by erroneously testifying that there were approximately 30 children in the area at the time of the incident. Video surveillance footage fails to support such, and the only testimony presented was that of Mr. Hooks, who was the arresting officer.

Additionally, Mr. Kirsh never intentionally or reasonably believes that he was placing any individual, adult or child, in harm while driving down the main highway or the residential street. LSA-R.S. 14:108.1 provides that Aggravated Flight From an Officer is the intentional refusal of a driver to bring a vehicle to a stop or of an operator to bring a watercraft to a stop, under circumstances wherein human life is endangered, knowing that he has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver or operator has committed and offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle or police watercraft.

In this case, the State has failed to prove the essential elements of the crime beyond a reasonable doubt. The State has failed to prove that any human life was endangered during this incident, as the testimony presented by Mr. Hoops was not corroborated by the video surveillance of the area.

In this case, Officer Hoops, who allegedly attempted to bring Mr. Kirsh's vehicle to a stop was facing his vehicle with the sirens on, and once the officer turned around to follow behind Mr. Kirsh's vehicle, he came to a stop. Pursuant to the aforementioned statutes, a person must "know that he has been given a visual and audible signal to stop by a police officer."

However, Mr. Kirsh was unaware that he was given a signal to stop because the officer that was allegedly in pursuit of him was originally facing his vehicle, not following. Once Officer Hoop's vehicle turned around and began to follow Mr. Kirsh, he came to a stop a few seconds later. According to Officer Hoop's testimony, the entire chase lasted for "a few seconds, not long." This shows that Mr. Kirsh did not intentionally refuse to bring his vehicle to a stop after knowing that he has been given a

visual signal. Therefore, there is a lack of evidence to support a guilty verdict of Aggravated Flight From an Officer.

The Louisiana First Circuit Court of Appeals stated, "Officers Hoops and Nunez engaged their emergency lights and sirens before turning onto Walnut Street. The vehicle was traveling about 50 miles an hour, or 30 miles per hour above the speed limit, and "continued to accelerate at an extremely high rate of speed."

Mr. Kirsch contends that it appears as though the Louisiana First Circuit Court of Appeals has erred in its determination of the sufficiency of the evidence concerning the Attempted Aggravated Obstruction of a Highway of Commerce (See: Ruling pp. 5-7). The Court of Appeals also relied on the questionable testimony of Mr. Hoops concerning children who were near the curve in Beechwood Drive. During Mr. Hoops testimony, which was presented without corroborating evidence, as the video surveillance footage also failed to show ANY children during this chase.

Mr. Kirsch avers that there is nothing in the Ruling from the Louisiana First Circuit Court of Appeals concerning Attempted Aggravated Obstruction of a Highway of Commerce (See: Court of Appeals Ruling in Docket No.: 2017-KA-0231, pp. 5-7), except for the statutory provision of LSA-R.S. 14:96A.

First and foremost, neither of the officers testified as to whether they had given Mr. Kirsch any "sign" that he needed to "pull over" while they were passing him. Furthermore, in order to meet their burden of proof that Mr. Kirsch was "speeding," was through the use of testimony from Officer Brad Hoops (ex-officer of the Slidell Police Department), whose testimony consisted of the fact that he had taken Radar Class, which had enabled him to determine that Mr. Kirsch's vehicle was traveling at approximately 30 miles over the speed limit. It's simply amazing that Ms. Hoops was able to determine the speed of Mr. Kirsch's vehicle without actually using the radar for such. It's also quite amazing that

although Radar School only instructs an officer on the proper use and tuning of a radar unit, could actually detect the speed of Mr. Kirsch's vehicle without the use of the radar.

Testimony "so unbelievable on its face that it defies physical laws" would be "incredible as a matter of law." *United States v. McKenzie*, 768 F.2d 602, 605 (5th Cir. 1989).

The Court of Appeals cited LSA-R.S. 32:125A in its response to Mr. Kirsch's allegations that he was not aware that the officers were intending for him to pull over. It **must** be noted that a violation of 32:125A does not meet any essential element of LSA-R.S. 14:108.1 or LSA-R.S. 14:96.

In fact, according to the testimony of Mr. Hoops, Mr. Kirsch's vehicle was traveling towards the officer's vehicle, and that Mr. Kirsch's vehicle **did not impede the right-of-way** of the officers. See: LSA-R.S. 32:125A,

Furthermore, the Court failed to take into consideration that Mr. Hoops, when questioned about Mr. Kirsch's vehicle leaving the roadway, testified that "it appeared that way, yes." This alone is not substantial proof that Mr. Kirsch's vehicle had actually left the roadway. There was not a definitive answer from Mr. Hoops concerning Mr. Kirsch's vehicle ever leaving the roadway; just that it "appeared" as though it had.

Although Officer Hoops testified that he had seen a group of twenty or thirty children who were near the curve in Beechwood Drive, the dash-cam failed to show that there were ANY children in the vicinity of the curve. It appears as though Officer Hoops had testified to such in order to obtain the play the "sympathy card" with the jury, or in the alternative, ensure that the State had met the statutory requirements of the charge.

Furthermore, there is lack of evidence to support a guilty verdict of Attempted Aggravated Obstruction of a Highway Commerce. LSA-R.S. 14:96 provides that Attempted Aggravated Obstruction of a Highway Commerce is the intentional or criminally negligent placing of anything or

performance of any act on any railway, railroad, navigable waterway road, highway, thoroughfare, or runway or an airport, wherein it is foreseeable that human life might be endangered.

LSA-R.S. 14:27 defines "attempt" as any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

In this case, Mr. Kirsh did not intentionally or criminally negligently place his vehicle on a road where it is foreseeable that human life might be endangered. Mr. Kirsh did not foresee that human life might be endangered because he did not see children playing near the street until he made the turn, at which point he came to a stop.

Officer Hoops testified that he could not see the children at play until he slowed down and made a turn at the curve. He testified that once he made the turn at the curve he saw Mr. Kirsh's vehicle stopped with Officer Nunez's vehicle in front of Mr. Kirsh's vehicle. Because the children were not visible until Mr. Kirsh made the turn at the curve, he could not foresee that human life might be endangered until after they were visible. Once the children were visible, the alleged chase was over after a few seconds and Mr. Kirsh's vehicle had already come to a stop, according to Officer Hoop's testimony. Therefore, there is a lack of evidence to support a guilty verdict for Attempted Aggravated Obstruction of a Highway Commerce.

Furthermore, these convictions are in violation of the Double Jeopardy Clause(s) of both the United States Constitution and the Louisiana Constitution of 1974.

Mr. Kirsch contends that the First Circuit Court of Appeals has erred in its determination that he was not subjected to Double Jeopardy. A reading of the Ruling from the First Circuit Court of Appeals shows that both the district court and the Court of Appeals used the "same evidence" to convict Mr.

Kirsch on both counts.

Accordingly, the State raised the issue of Double Jeopardy, and the Court of Appeals had ordered the defendant to file a Supplemental Brief to address the issue of Double Jeopardy.

Although the Court of Appeals disagreed with the State and Mr. Kirsch concerning this issue, stating that, "The prohibition against double jeopardy is not violated, however, when the defendant is prosecuted for different criminal acts committed during one sequential continuing course of conduct."

However, it must be noted in the case before the Bar, the **same evidence** was used to obtain both of Mr. Kirsch's convictions, which would be a violation of ***Blockburger v. United States***, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed.2d 306 (1932).

The Court of Appeals has erroneously cited ***State v. Jones***, 115 So.3d 643, 650 (La. App. 4th Cir. 4/24/13), and ***State v. Bates***, 859 So.2d 841 (La. App. 2nd Cir. 10/16/03) to deny relief in this matter. In the case of ***Jones***, the guilty pleas to the traffic offenses did not bar prosecution for Aggravated Flight From an Officer during the same incident, where the traffic offenses **DID NOT INVOLVE** the acts enumerated in LSA-R.S. 14:108.1D. In the case of ***Bates***, where the defendant's convictions arising out of a car chase for Aggravated Flight From an Officer and Aggravated Criminal Damage to Property did not violate Double Jeopardy (due to the fact that the Aggravated Criminal Damage to Property relied on separate elements than the Aggravated Flight From an Officer).

After a review of the Ruling by the Court of Appeals, it must be noted that the Court relied on the evidence of the Aggravated Flight From an Officer when denying Mr. Kirsch relief, stating that, "the jury could have reasonably concluded the defendant was traveling at a high rate of speed on a neighborhood street in close proximity to children, and his actions were intentional or criminally negligent and foreseeably endangered human life."

However, in this case before the Bar, the State is the party who had instituted the fact that the

conviction of Attempted Aggravated Obstruction of a Highway of Commerce has subjected Mr. Kirsch to Double Jeopardy.

WHEREFORE, for the aforementioned reasons, the arguments in Mr. Kirsch's counseled Original Brief on Appeal, and in Mr. Kirsch's Pro-Se Supplemental Brief on Appeal, Mr. Kirsch respectfully requests this Honorable Court to invoke its Supervisory Authority of Jurisdiction over the lower court; and after a thorough review of the merits of such Grant the relief deemed necessary by this Court.

CONCLUSION

For the reasons stated above and in the previous filings in the State of Louisiana Courts, Mr. Kirsh's Writ of Certiorari should be granted, and this matter be remanded to the district court for a new trial. Mr. Kirsh has shown that this conviction is contrary to clearly established federal law as established by the United States Constitution and the United States Supreme Court.

Respectfully submitted,

Cornelius Kirsh
Cornelius Kirsh

Date: December 3, 2018