

No. \_\_\_\_\_

**18-8129**

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES RUSSELL

(Your Name)

— PETITIONER

**ORIGINAL**

VS.

THE STATE OF TEXAS

— RESPONDENT(S)

FILED

JAN 28 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF TEXAS, FIFTH APPELLATE DISTRICT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES RUSSELL

(Your Name)

3899 STATE HWY. 98

(Address)

NEW BOSTON, TX 75570

(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

I.

Did the Trial Court relieve the state of its burden to prove guilt beyond a reasonable doubt when it allowed the state to show the jury photos found on Petitioner's social media showing Petitioner holding a Glock with an extended magazine when the State's own witnesses testified that on the night of the event at no time did Petitioner have any type of gun in his possession when the gunfire erupted and the complainants were killed?

## LIST OF PARTIES

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

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### OTHER

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

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

**OPINIONS BELOW**

[ ] For cases from **federal 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[ ] is unpublished.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[ ] is unpublished.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 B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] is unpublished.

The opinion of the Court of Appeals of Texas court appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] 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. \_\_A\_\_\_\_\_.  
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 11/7/18.  
A copy of that decision appears at Appendix A.

[ ] 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. \_\_A\_\_\_\_\_.  
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"No U.S. resident shall be deprived of life, liberty, or property without Due Process of Law."Amends. V & XIV. U.S. const.

## STATEMENT OF THE CASE

According to trial testimony, Petitioner Charles Russell, his brother Patrick Russell, and two friends of theirs, Dewen Kight and Tevyn Boone all drove together in the same ~~xxx~~ from Louisiana to Dallas to meet up with Tavares Tell and Kenny Garcia, the two deceased complainants, to purchase 9 ounces of cocaine from Tell and Garcia for \$8,000. When Petitioner's group arrived at the meet, his brother Patrick exited the vehicle Petitioner's group was in and got into Tell's car with Tell and Garcia.

Shortly after Petitioner's brother entered the vehicle with Tell and Garcia, Tell lowered the window in his car and gestured for Petitioner to join him, Garcia, and Patrick in Tell's car.

According to Boone and Kight, who both turned state's evidence, within seconds of Petitioner exiting the vehicle they were in ~~xx~~ to approach Tell's car gunfire erupted and Petitioner was struck by bullets.

Patrick Russell then exited Tell's car. According to Kight and Boone's testimonies, Patrick ran to the car carrying a white cloth which had two guns wrapped in it.

According to Boone and Kight, Petitioner never had a gun in his possession that evening. Boone and Kight also testified in contradiction to the State's theory of the case that it was a drug deal gone bad when Petitioner and his group decided to rob Tell and Garcia for the drugs. Yet, both Boone and Kight testified that there was never a plan to rob the dealers, and that it was supposed to be a straightup drug deal.

Absent any evidence from the State witnesses that Petitioner ever ~~possessed~~ had a gun in his possession during the incident, the State was allowed, over objections, to show the jury a photo of Petitioner taken months prior to the offense and found on Petitioner's social media holding a Glock with an extended magazine.

Though police could not say with certainty that the murder weapon was a Glock. They claimed that the evidence was of a "Glock-styled" weapon having been used, and that the number of shell casings indicated that the murder weapon had an extended magazine.

The jury heard evidence that the Glock owned by Tell with an extended magazine was missing from his ~~xx~~ house.

## REASONS FOR GRANTING THE PETITION

- I. Did the Trial Court relieve the state of its burden to prove guilt beyond a reasonable doubt when it allowed the state to show the jury photos found on Petitioner's social media showing Petitioner holding a Glock with an extended magazine when the State's own witnesses testified that on the night of the event at no time did Petitioner have any type of gun in his possession when the gunfire erupted and the complainants were killed?

Review should be granted because the State courts of appeal have sanctioned the use of Texas Rule of Evidence 403, which is fashioned after the federal rule 403, to substitute for evidence of guilt by allowing the State to present the jury with extraneous evidence which is irrelevant to the question of whether Petitioner is guilty in the instant case and was highly prejudicial.

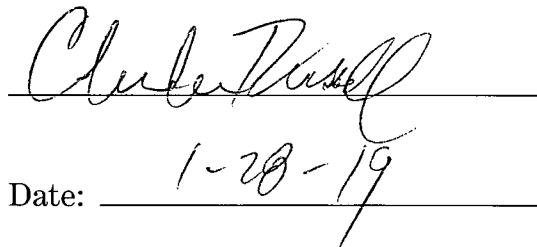
The State had no conclusive evidence that a Glock was even the murder weapon; there was no evidence of gunshot residue on anyone's hands except the complainants'; and both accomplices testified for the State but were adamant that no robbery was planned and that at no time during the drive to Dallas from Louisiana, upon arrival to the meet, or after the shooting did Petitioner ever possess any type of firearm.

Allowing the State to bolster its case deficiencies with a three months old photo of Petitioner holding a Glock when no evidence of Petitioner possessing a weapon on the night of the offense contradicts the Supreme Court's decision in Old Chief v. United States, 519 U.S. 172 (1997) and violates Petitioner's right to due process of law. See Jackson v. Virginia, 443 U.S. 307,319 (1979).

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Date: 1-28-19