

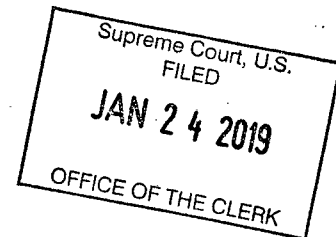
18-8696

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

**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES



Cody Brown — PETITIONER  
(Your Name)

vs.

State of Louisiana — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeal State of Louisiana  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cody Brown  
(Your Name)

Louisiana State Penitentiary  
(Address)

Angola, LA 70712  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## 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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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☐ is unpublished.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☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 12-20-17.  
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

The United States Constitution, Amendment VI provides in Pertinent Part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The United States Constitution, Amendment XIV, I provides in Pertinent Part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The United States Constitution, Amendment VIII provides in Pertinent Part:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Fed Rule 403 Excluding Relevant Evidence for Prejudice, Confusion, waste of time.

Fed Rule 401 Test for Relevant Evidence

Evidence is Relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) The fact is of consequence in determining the action.

### QUESTION(S) PRESENTED

- 1) Whether Trial Court admitting other crimes as evidence violate Mr. Brown 6<sup>th</sup> amendment Right to a fair & Impartial Jury?
- 2) Whether Trial Court violated Mr. Brown 14<sup>th</sup> amendment Due Process Rights with unfair Trial?
- 3) Whether Trial Court erroneously finding Mr. Brown a second offender violate his 8<sup>th</sup> amendment cruel and unusual punishment?

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Chapman v. California, 386 U.S. 18, 87 S. Ct.  
17 L. Ed. 2d 705 (1967)

Sullivan v. Louisiana, 508 U.S. 275, 113 S.  
Ct. 2078, 124 L. Ed. 2d 182 (1993)

Huddleston v. United States, 485 U.S. 681, 682, 108 S. Ct. 1496,  
1497, 99 L. Ed. 2d 771, 778 (1988)

### STATUTES AND RULES

La. R.S. 40:966(A)  
La. R.S. 40:967(A)  
La. C.C.P. ART 404(B)  
La. C.C.P. ART 412  
La. R.S. 15:529.1

### OTHER

La. Constitution, Article V, section 10(A)

# STATEMENT OF THE CASE

Cody Brown was charged by Bill of Information with one Count of Possession with Intent to distribute heroin, a Violation of Ca. P.S. 40:966(A) and one Count of Possession with Intent to distribute Cocaine, a Violation of Ca. P.S. 40:967(A). (16-KA-0143) (Rec. p. 15). On February 19, 2015, he entered a Plea of guilty. (16-KA-0143) (Rec. p. 1) The motions to suppress the statement and the evidence were heard and denied during lunch on the day of Trial. (16-KA-0143 Rec. pp. 8-10, 125-40). A Jury was selected on September 1, 2015, and that evening, Mr. Brown was found guilty as charged on both Counts. (16-KA-0143) (Rec. pp. 8-10). The Trial Court denied the motion for new trial and motion for post verdict judgment of acquittal. (16-KA-0143 Rec. pp. 285-6). Mr. Brown was sentenced to serve thirty years on each Count to be served concurrently, with credit for time served. The motion to reconsider the sentence was denied. The State filed a multiple offender Bill of Information. (16-KA-0143 Rec. pp. 286-9). On February 29, 2016, Mr. Brown was found to be a second felony offender. The sentence on Count one was vacated and Mr. Brown was sentenced to fifty years on the double Bill. All sentences were to run concurrent and he was given credit for time served. (16-KA-0143 Rec. pp. 295-320). The written motion for appeal was filed and granted. (16-KA-0143 Rec. p. 81). On October 26, 2016, the 5th Circuit Court of appeal remanded the matter back to the Trial Court to rule on the

Two pending motions for new trial. On April 8, 2017, The Trial Court denied the motions for new trial and on April 18, 2017, a new motion for appeal was granted. On May 18, 2017, The motion to reconsider the sentence was denied. (Rec pp. 7-10, 35). On Appeal The 5<sup>th</sup> Circuit Court affirmed conviction and sentence December 20<sup>th</sup>, 2017. Louisiana Supreme Court then denied timely filed writ on 11-5-18.

### REASONS FOR GRANTING THE PETITION

The Trial Court should not have included the other crimes evidence presented to the jury by way of videos and photos of alleged drugs, money and guns that were recovered off one of the cell phones found on Mr. Brown. They were irrelevant to the crime charged and were prejudicial to the jury's fair consideration of if Mr. Brown possessed heroin and cocaine with the intent to distribute. Second, the trial court also should have held the state to the standard of producing a certified packet of a conviction with Mr. Brown name on it or a noted alias of Mr. Brown. The trial court should not be able to bring unsubstantiated evidence into the trial that played a substantial role in the verdict and then deem it harmless. The state never established a contract linking the phone to the owner. In no way did they show Mr. Brown in any photo or did they prove that any text message was intended for him. The phone and contents were purely circumstantial. The state of Louisiana continually violate constituents rights as American citizens and subject it to harmless error. If nothing is done my life and liberty will continue to be suppressed and people in situations like mine will continually get convicted with inadmissible evidence and other crimes of evidence that is unsubstantiated. In *State v. Priour*, 277 So.2d 126 (La. 1973), *Taylor*, 217 So.3d at 287. In *Priour*, the Louisiana Supreme Court found that a court may admit evidence of other crimes, if the state is able to show that the defendant committed the other crime by clear and convincing evidence. Citing *Huddleston vs. United States*, 485 U.S. 681, 682, 108 S.Ct. 1496, 1497, 99 L.Ed.2d 771, 778 (1988). The state must show defendant committed past crimes by the preponderance of the evidence.

In State v. Guillen, 14-298 (LA.App.5 Cir 10/29/14), 164 So.3d 896, 897, in State v. Bell, supra, at 241 in State v. Williams 16-32 (LA.App.5 Cir 8/24/16), 199 So.3d 1205, 1212. Citing all those cases the court used cases in which every defendant admission of prior acts were crimes they were actually convicted of. In Mr. Brown case the state introduced pictures and videos out of a cell phone of unsubstantiated acts. The state never established when the videos or pictures were taken or who the phone was for. Here the evidence of defendant's prior crimes is unduly prejudicial. In Napoleon the court found that the circumstances were a continual chain of events. Under the doctrine formerly known as Res gestae if the evidence ~~has~~ close connectivity and proximity to defendant's arrest and the state could not accurately present the facts of December 5, 2014 without entering the contents of the phone. The contents of the phone had nothing to do with that day, the videos were from days, weeks, months or even years ago that was never established. The substances were never tested or obtained so its no way to definitively say that it was drugs. No expert witness was called to testify and the Det. was testifying as a layman witness as to the contents. The phone had nothing to do with the stop or drugs and under law should not have been allowed in trial.

State of Louisiana v. Alfred Scott No 2015-KK-1762  
The Test of the admissibility of "integral act" evidence is not simply whether the state might somehow structure its case to avoid any mention of the uncharged act or conduct, but whether doing so would deprive its case of narrative, momentum and cohesiveness, with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict. LSA-CE-ART. 404(B)(1)  
To constitute Res gestae the circumstances and declarations must be necessary incidents of the criminal act, or immediate concomitants of it, or form in conjunction with it one continuous transaction.

The photos and videos didn't constitute Res gestae they just painted the defendant in a bad light and swayed the jury in the wrong way.  
More correctly described as the integral act doctrine under present law, this doctrine "reflects the fact that making a case with testimony and tangible things not only satisfies the formal definition of an offense but tells a colorful story with descriptive richness." Old Chief v. United States, 519 U.S. 172, 187, 117 S.Ct. 644 653, 136 L.Ed. 2d 574 (1997) Evidence of other crimes wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. The state held a pretrial hearing to introduce the contents of the phone which is not the rule. A pretrial hearing is supposed to be held to show the defendant committed prior acts. The state introduced the evidence under Res gestae the exception, which means crimes were unsubstantiated so they needed not

To Prove at Trial That The evidence was a vital part of the case and that they couldn't Present Their case without Introducing The evidence. If The state introduced the evidence under the exception Res gestae No Preliminary hearing was needed. The hearing was to Prove Mr. Brown committed the acts. The acts were unsubstantiated so it was no way to Prove them under the Preliminary doctrine. In Trial the state said the acts constitute Res gestae The exception which no hearing was needed to introduce. By the state saying the acts were Res gestae is acknowledging their unsubstantiated. And the fact that the state held a Preliminary hearing is acknowledging the acts don't constitute Res gestae. In State v. Scott No 2015-KK-1762 "According to the state, Because these constitute Res gestae, No Preliminary notice is necessary and there is no obligation to prove defendant committed these acts until trial. The state introduced the evidence as a act they could substantiate with a Preliminary hearing. So they conceived that the acts did not constitute Res gestae. If the state is allowed to introduce inadmissible unsubstantiated evidence in a Preliminary hearing then switch their arguments the fundamental fairness and Constitutional Right of a impartial jury will be violated in cases like this continually in the state of Louisiana.

**CONCLUSION**

wherefore, the appellant's conviction and sentence should be reversed.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cody Brown

Date: 3/7/19