

No. 19-5289

Supreme Court, U.S.  
FILED

**MAY 24 2019**

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

PHARAOH BRAZELL,  
*PETITIONER*  
VS.

ROBERT TANNER,  
*RESPONDENT*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
LOUISIANA SUPREME COURT  
STATE OF LOUISIANA  
NO.: 2018-KO-0868

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PETITION FOR WRIT OF CERTIORARI

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Pharaoh Brazell, Pro Se  
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## **QUESTIONS PRESENTED**

- I. Can the State use a forged Guilty Plea form from a Florida predicate offense and used it to enhance his sentence as a Habitual Offender?**
  
- II. Is Petitioner's conviction in violation if the State used statements when the officers' admitted to not informing him of his right to remain silent, right to consult with an attorney, and right to have attorney present during questioning.**

## **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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**PETITION FOR WRIT OF CERTIORARI TO  
THE LOUISIANA SUPREME COURT**

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

**OPINIONS BELOW**

The opinion of the **LOUISIANA SUPREME COURT** to review the merits, appears at Appendix "A" to the petition and is unpublished.

The opinion of the **FOURTH CIRCUIT COURT OF APPEAL** appears at Appendix "B" to the petition and is reported at **State v. Brazell, 245 So. 3d 15; 2018 La. App. LEXIS 765 (LA. APP. 4<sup>th</sup> Cir. 4/18/18)**

**JURISDICION**

The jurisdiction of this Court is invoked under **28 U.S.C. §1257(a)**, which the Louisiana Supreme Court denied Certiorari on March 6, 2019.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. CONST., AMEND. V**

...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law....

### **U.S. CONST., AMEND. VI & XIV**

In all criminal prosecutions, the accused shall enjoy...to be informed of the nature and cause of the accusation...and to have the Assistance of Counsel for his defense.

### **U.S. CONST., AMEND. XIV**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

## STATEMENT OF THE CASE

On August 22, 2014, Petitioner was charged by the grand jury indictment with (Count 1) attempted first degree murder, (Count 2) aggravated rape, and (Count 3) second degree kidnapping of K.H. At the arraignment on August 27, 2015, Petitioner pled not guilty to all charges. On January 5, 2016, the State amended Count 1 of the indictment from attempted first degree murder, a violation of La. R.S. 14(29) 30, to second degree battery, a violation of LA. R.S. 14:34.1 and dismissed Count 3.

Following a three-day trial, on January 27, 2016, Petitioner was found guilty of second degree battery and not guilty of aggravated rape. February 24, 2016, the trial court sentenced Petitioner to five years at hard labor. The State filed a Multiple Offender Bill against Petitioner.

Petitioner filed a Motion to quash the Bill. The trial court sentences him to serve thirty-five years in the Louisiana Department of Corrections. The trial court further denied a motion for downward departure.

On August 14, 2017, Petitioner filed into the Fourth Circuit Court of Appeal, State of Louisiana, which ruled on April 18, 2018, Affirmed in Part, vacated in Part, and Remanded in Part. On March 6, 2019, The Louisiana Supreme Court, denied Writ of Certiorari.

## **REASON FOR GRANTING THIS PETITION**

### **I. THE LOUISIANA SUPREME COURT HAS UNREASONABLY AND ARBITRARY OVERLOOKED A GLARING PROCEDURAL IRREGULARITY IN PETITIONER'S FLORIDA PREDICATE CONVICTION THAT WAS USED BY THE STATE TO ENHANCE HIS SENTENCE.**

The Louisiana State Courts held that the State met the requisite burden to prove Petitioner knowingly and voluntarily entered a guilty plea on March 10, 2005, to a felony charge of possession of a controlled dangerous substance, in the State of Florida. However, in so holding, the State Courts overlooked a glaring procedural irregularity in the taking of his plea, which was in violation of his right to Due Process of Law pursuant to the Fourteenth Amendment to the United States Constitution.

The Fourth Circuit Court of Appeal placed great weight on the guilty plea form that State introduced for this Florida conviction. The Court further stated the guilty plea form indicated that Petitioner acknowledged that he understood and was waiving his rights to trial by jury, to confront his accusers, and his right to testify or remain silent. The Court further stated that this guilty plea form was signed by Petitioner, his attorney, and the Judge.

In fact, Petitioner's signature does not appear anywhere on this form. (SEE **Exhibit A**) On page two of this form, there is a line for Petitioner to sign with his name and address typed beneath it. However, this line is blank; contrary to the Fourth Circuit's ruling. Furthermore, Petitioner did not sign the guilty plea form.

Petitioner purported attestation on the waiver of rights form is clearly forged.

**(SEE Exhibit B)** The pertinent typed portion reads as follow: "I \_\_\_\_\_, defendant, withdraw my plea(s) of not guilty and enter plea(s) of guilty..." Petitioner's name is written on the line as if it is attesting that he is withdrawing his plea of not guilty and entering a plea of guilty. An inch above his name is handwritten in on the caption of, "State of Florida v. Pharaoh Brazell." The handwriting is clearly the work of the same person; a lay person can easily determine this. Other documents submitted by the State, such as conviction packets from Jefferson Parish and Orleans Parish predicates, show that Petitioner's signatures and initials that appear on those waivers of rights forms are not from the Florida predicate conviction at issue. **See Exhibits C and D; Florida predicate.**

Thus, there exists a glaring procedural irregularity in the taking of the plea for the Florida predicate conviction. The Louisiana Supreme Court has unreasonably and arbitrary overlooked a glaring procedural irregularity in Petitioner's Florida predicate conviction that was used by the State to enhance his sentence seven times, and the judgment must be reversed.

**II. THE LOUISIANA SUPREME COURT HAS OVERLOOKED CRITICAL FACTS IN HOLDING THAT PETITIONER'S STATEMENTS WERE UNSOLICITED AND SPONTANEOUS, AND THEREFORE DID NOT IMPLICATE MIRANDA. THIS IS A CLEAR VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE 5 AND 14 AMENDMENTS OF THE UNITED STATES CONSTITUTION.**

The Louisiana State Courts held that Petitioner's statement was unsolicited and spontaneous, the transcription of officer Betcher's body camera, (**Included as Exhibit E**) flatly contradicts this holding.

When officer Betcher initially approached Petitioner, he was already handcuffed and placed in the backseat of a patrol car. **SEE Exhibit E.** At this point Petitioner was in custody, and the safeguard of Miranda were implicated. However, instead of making Petitioner aware of his rights per Miranda, officer immediately began questioning him in a manner designed to elicit incriminating responses. Officer Betcher's fourth question to Petitioner was, "How'd she get the shiner?" This can only be characterized as interrogation designed to acquire inculpatory evidence. After he responds to officer Betcher's question stating that he doesn't know, Betcher confronts him, stating, "She's saying you work her over." It cannot reasonably be disputed that officer Betcher was trying to get Petitioner to incriminate himself, and was thus required to advise him of his rights per Miranda.

The Fourth Circuit erred in holding that Petitioner's statements were spontaneous and unsolicited when the record so affirmatively belies such a conclusion.

Detective Taillon was the lead detective in Petitioner's case. However, Taillon admitted she did not advise Petitioner of his Right to Counsel and Miranda rights, even though she met him in the parish jail well after his arrest. According to Taillon, Petitioner told her quite firmly that he did not want to speak with her. After making this firm declaration, he allegedly began blurting out incriminating statements. Taillon's testimony is self-impeaching, and cannot be relied upon to hold that Petitioner's alleged statements to her were free and voluntary, particularly when she admitted to not advising him of his Miranda rights.

Petitioner was clearly in custody and was never advised of his Miranda rights, his statements were inadmissible. The State's use of the statements at trial violated Petitioner's right to remain silent, right to have counsel present during questioning and right to due process, and right to a fair trial, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

The Louisiana Supreme Court has overlooked critical facts in holding that Petitioner's statements were unsolicited and spontaneous, and therefore did not implicate Miranda. This is a clear violation of Petitioner's constitutional rights. Therefore, his conviction must be reversed and remanded for a new trial.

## CONCLUSION

Petitioner requests that this Honorable United States Supreme Court grants his Certiorari and reverse his conviction and remand for a new trial.

Respectfully Submitted,



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## VERIFICATION

I hereby verify that the facts set forth in this petition are true and accurate to the best of my information and belief.



Pharaoh Brazell, Pro Se