

No. _____

19-8608

IN THE

SUPREME COURT OF THE UNITED STATES

Kison Robertson — PETITIONER
(Your Name) *pro-se*

ORIGINAL

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals-Eighth Cir
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

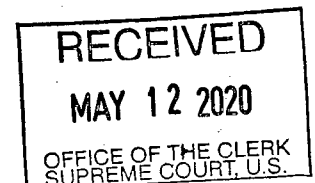
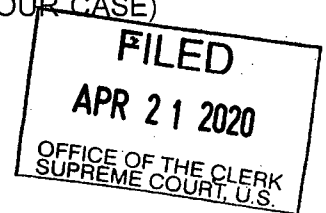
PETITION FOR WRIT OF CERTIORARI

Kison Robertson
(Your Name)

F.C.I. P.O. Box 6000
(Address)

Florence CO. 81226
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. How does the U.S. Court of Appeals uphold The District Court Decision to let in Evidence that was not proven to have occurred in the trial Record?
(911 sth call, Caller statement, and Marijuana transaction) Evidence.
2. How does the evidence of the 512 911 call, the statement portion be allowed to be dumped on the Defense Right before the trial, Just before Jury Selection?
3. How does evidence of a marijuana transaction for the 1st time come to The Defense Attention Again Right before trial when The Defendant Asked for All evidence 15 days before Trial by motion?
(This also came to The Defendant's Knowledge Just Before Jury selection).
4. How can the U.S. Court of Appeals for the Eighth Circuit Determine what the 5th 911 call - caller Intentions were with-out no one ASKING The Caller what there intentions were?
5. Do The U.S. Court of Appeals get to guess what The 512 911 call - Caller Intentions were?
6. What happens when what the 512 911 caller said in The statement portion of The 512 911 call is untrue, or is not 1st hand Knowledge and maybe something they heard? no one knows.

II.

7. What is to be done if the District Court Ruled in the Defendant's favor At the pretrial Conference granting The Defendant's Limine? Against the evidence That The prosecutor wanted to bring into the Trial in form of 404(b) That was The same Evidence pertaining to The incident on 3-2-17 which is The same incident The 512 911 caller was trying to discribe. (in which The Defendant was shot at). See: pretrial Conference At: page 26 of 59 Lines. (15-20) And Also The Defendant's Response to the 404(b).

8. How can the District Court Rule the info can not come into the trial Then Let it in by way of a 911 call? (The 512 911 call)

9. How does the U.S. Court of Appeals in The opinion II States This 911 caller in The 512 call, say's The caller states He Just shot at urva, Then This same caller say's "hurry" "hurry" he's going to come back with a gun, now why would I need to come back if I'm already There shooting at urva?, This Don't make any sense. See page 4 First paragraph (II) (opinion).

10. How does it get by everybody That urva Quickbear Sr. said He guessed That his son bought marijuana from The Defendant, Not That he seen or was told The marijuana came from Defendant. The son said he never bought any marijuana from The Defendant nor did he know of any debt

owed by his dad, WURVA Quickbear Sr, Then WURVA Quickbear Jr also states the same on the stand at trial and to the F.B.I in his interview. to wit: This brings question to WURVA Quickbear's testimony and brings question to the prosecution theory of why the incident happen in the first place. See: WURVA Quickbear Sr testimony At: page 63 of 118 Lines 21-25, page 64 of 118 Lines 1-25, and page 65 of 118 Lines 1-2. and on cross page 93 of 118 Lines 19-25, and page 94 of 118 Lines 1.

11. If a person give his son \$20.00 to buy some marijuana how does he owe 20.00 for the same marijuana?

12. Do you believe this marijuana transaction ever took place?

13. WURVA Quickbear Jr. Didn't know what the prosecutor was talking about, when asked if he knew about a debt. See: WURVA Quickbear Jr. testimony: page 150 Lines 19-25 and page 151 Lines 1-9.

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:

Eric D. Kelderman - (U.S. Attorney)

Kevin Koller - (U.S. Attorney)

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TABLE OF AUTHORITIES CITED

CASES (2006) 827, pg 10, 11, 12
 DAVIS V. Washington, 547 U.S. 813, - PAGE NUMBER
 Crawford V. Washington, 541 U.S. - - pg. 11, 13
 36 (2004) + 827.

Lilly V. Virginia, 527 U.S. 116, 137 - - pg. 11
 (1999) (plurality opinion).

United States V. Mitchell, No. 17 - - pg. 11, 12
 1698. (8th Cir March 19, 2018)

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 172, 180 (1997).

STATUTES AND RULES

18 U.S.C. 113 (A)(3) - - - - - pg. 4

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United States V. Mothershead, 859 - - pg. 16
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United States V. Riebold, 135 F.3d - - - pg. 17
 1226, 1229 (8th Cir 1998) (Citations Omitted).

United States V. Panter, 688 F.2d. - - pg. 20
 268 (5th Cir 1982).

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 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 United States district court appears at Appendix B 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 _____ 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 1-23-20.

☐ 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: MARCH 26, 2020, 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

United States Constitution. Amendment 6
"The Criminal Accused has a Right to Confront
The witnesses Against him." (U.S. Const. Amend.
6).

STATEMENT OF THE CASE

Nature of the case: Robertson's three-day Jury trial resulted in a split verdict, after stating he acted in self defense and the District Court giving the Jury a self defense Reading. The Jury convicted him of three counts of the six-count superseding Indictment: Count two (Assault with a Dangerous Weapon in violation of 18 U.S.C. 113(A)(3) and 1152), Count Four (Assault Resulting in Serious Bodily Injury in violation of 18 U.S.C. 113(A)(6) and 1152), and Count Five (Discharge of a Firearm During the Commission of a Crime of Violence in violation of 18 U.S.C. 924(C)(1)(A)(iii); The Jury acquitted Robertson of Count One (Attempted murder), Count Three (Assault with a Dangerous Weapon) and Count Six (Discharge of a Firearm During the Commission of a Crime of Violence).

The district court imposed a total sentence of 197 months, the low end of the advisory guideline range for counts two and four, to run consecutively to the ten year mandatory minimum on count five, (77-10 yrs) total 197.

Robertson appealed his conviction to the U.S. Court of Appeals for the Eighth Circuit, NO: 18-3375

ON Appeal Robertson Appealed the statement portion of the 5th 911 call of Exhibit (7) "He's the same one who shot his gun over here last month."

Robertson also Appealed the evidence of a marijuana transaction for \$20.00

Robertson also Appealed the prejudicial effect of the cross-examination.

99.6
REASONS FOR GRANTING THE PETITION

Robertson's trial Lasted Three day's. On the First day of trial, prior to Jury selection, the prosecution noticed it intended to introduce tape Recordings of several 911 phone calls (T.T. 8:9-11) the Defense objected.

The 5th 911 call of exhibit (7) was prejudicial to the Defendant.

1. No one know who the caller was, and if the prosecution knew who the caller was they told no one.
2. There were other calls in exhibit (7) that clearly would of helped the police to arrest the Defendant, than to present this highly prejudice statement in the 5th 911 call.
3. The District Court granted the Defendant's Limine At the pre trial Conference, putting a end to the evidence in the 5th 911 call from being admitted in the trial, stating at the pretrial Conference, That,

Court So I find that the unfair prejudice is Substantially outweighed by the probative value of the evidence, so I'm going to grant the motion in Limine to preclude the introduction of the 404 (b) evidence regarding mr. garnette, The situation of march 2nd 2017 is what the 911 caller in the 5th call was trying to say without 1st hand knowledge. See: (pre trial transcript) page I.d. # 400 page 26 of 59, Lines 15-20 and page I.d. # 399, page 25 of 59 Lines 6-10 of the pretrial Conference. (pg. 6)

4. the notice of the 911 evidence was given to Defense too late to investigate it, without prior notice which seems to be this prosecutor trend.

5. with all the other calls this statement in the 5th 911 call was not needed to get the point across to the Jury, the statement part of the 5th 911 call was overkill.

At the same time the prosecutor also notified the Defense and Court that he intended to introduce evidence of Urvu Sr. owed the Defendant \$20.00 for an marijuana transaction, the Defense objected.

1. the marijuana transaction never took place and this fact is supported by the record, see trial transcript of Urvu Sr. Quickbear at page 63 of 118 lines 21-25, page 64 of 118 lines 1-25, and page 65 of 118 lines 1-2 then go to page 93 of 118 lines 14-25 and page 94 of 118 line 1#.

2. you can't give your son \$20.00 bucks for some marijuana and still owe \$20.00 bucks for it Urvu Sr. (states on stand He gave son \$20.00 to get him marijuana)

3. Urvu Quickbear also states on the stand he guessed that the marijuana came from me.

4. The marijuana I deal came up during the F.B.I interview of Urvu Quickbear in the hospital the next

Day After the Shooting; when Urua Quickbear Sr. was first asked about any marijuana his answer was no, Then you can hear the Agent saying to Urua Quickbear, Sr. you're not in any trouble, that he, (The Agent) wanted to put the defendant in prison. See: Urua Quickbear Sr Statement to the F.B.I The next day after the shooting in the hospital.

5. The son Urua Quickbear Jr. was also asked about a debt owed by his dad Urua Quickbear Sr. to the defendant, The son stated on the stand he knew nothing of a debt owed to the defendant by his Dad Urua Quickbear Sr until afterwards, And this was consistent with his statement to the F.B.I when he was interviewed. See: (Urua Quickbear Jr. Statement to F.B.I). Also See: (trial transcript of Urua Quickbear Jr.), page 150 Lines 24-25 and page 151 Lines 1-5 of Urua Quickbear Jr testimony.
6. The Federal Complaint stated the reason for the incident on March 30, 2017, was because of a financial disagreement, this was before the marijuana evidence was slid in.
7. The son Urua Quick^(Jr.) had no knowledge of the Debt owed to the Defendant by his dad he stated on the stand and he also gave other reasons for why the Incident happened on 3-30-17, that had nothing to do with marijuana and or \$20.00 See: (trial transcript of Urua Quickbear Jr) page 150 Lines 19-23, and page 151 Lines 6-10.

8. This whole incident begin because I said hi to the son at the store, a friendly Gester turned bad by the son ~~urva~~ Quickbear Jr. And the Record Supports This, There was never no marijuana Deal supported by The record therefore This Evidence should of never been Admitted.

If the Court Look into what I'm saying you will see I'm Right in what I'm saying, and should Grant The petitioner a new trial.

The prosecutor Question to The Defendant About the possession of a fire arm tainted the Jury thinking and Could have made Them Think This guy was not suppose to have a gun in his possession, if the prosecutor wanted to bring This type of Questioning he could of charged the possession of a fire arm, this Line of Questioning tainted The Jury Thinking.

The factual dispute at trial was whether Robertson fired a handgun in self defense after being "ganged", and assaulted, by four or more people. Robertson testified, and his credibility was important to the Jury's determination. The prosecution was allowed to introduce evidence in form of a 911 call, (The Fifth 911 call) statement of Exhibit #7, and evidence that the incident started over a drug debt for marijuana, a change in direction from what was stated in the complaint, and also proven at the trial. And last that the petitioner, committed an uncharged crime in possessing a firearm to defend himself; (while looking for his money and house key's back at the scene). Admitting this evidence and evidence that Robertson was the same person who shot a gun in the same area the month before; this evidence tainted the trial because it solicited the Jury to make its determination outside the relevant direct evidence of the specific events of the charged crimes.

1. The Fifth 911 tape should have been excluded under Crawford and Rule 403.

A. The Confrontation Clause:

in Davis v. Washington, 547 U.S. 813 (2006)
the Supreme Court addressed the admissibility

OF 911 CALLS in the context of Crawford v. Washington 541 U.S. 36 (2004) The court held that the 911 calls were non-testimonial and, therefore, not subjected to Crawford. See Davis, 547 U.S. at 827. However, in Davis the court noted that the difference between Davis and Crawford is, In Davis, The caller was speaking about events as they were actually happening, rather than "describing past events" Lilly v. Virginia, 527 U.S. 116, 137 (1999) (plurality opinion). Id. at 827..

The district court in this case, relied on the Eighth Circuit Decision in United States v. Mitchell, no. 17-1698 (8th Cir. March, 19, 2018) (unpublished) in deciding that the 911 calls in this case were non-testimonial. The Eighth Circuit Court of Appeals specifically held in Mitchell that

"Because the 911 call was made to enable police to identify and apprehend an armed, threatening individual, the caller's statements were not testimonial in nature and thus did not implicate the Confrontation Clause. Accordingly, they were admissible if they were otherwise in compliance with the federal Rules of Evidence."

The district Court in this case explained that it found the calls Admissible under the Federal Rules of Evidence, "either as a present-sense impression or as an excited utterance". (T.T. 16:19-22).

The district Court failed to Account for the unique nature of the fifth call. The specific statement that Robertson, (the petitioner) was "the same one that shot a gun over here last month," as opposed to the "Mitchell case," was not about events as they were actually happening. It was a statement, rather, that described past events, (that's what the 911 caller added to the 911 call). See Davis At 827. The fact that the caller was Anonymous exacerbates the admission of this evidence without giving the petitioner his Sixth Amendment right to cross-examine the witness, on the testimonial statement. See U.S. Const. Amend. 6 (stating that the criminal Accused has a right to Confront the witnesses Against him. The fifth 911 call simply repeated the the same information shared in the prior four Admitted 911 calls, The fifth 911 call should have been excluded because the information was the same as the information in the 404(b).
Limine The Judge had excluded in granting The
12.

petitioner's motion in Limine during the pretrial conference. See (pretrial conference). page 26 of 59 Lines 15-25, and also page 25 of 59 Lines 6-11.

Also The petitioner ASKED for All Related evidence be provided to the defense by motion to the prosecution and yet Right before Jury selection the prosecution notice they wanted to bring this fifth 911 call and MARIJUANA evidence in leaving the defense no time to dispute it.

The petitioner did not get a chance to confront the evidence in the fifth 911 call because no one was called to confront, or to confirm the statement given in the 911 call; Crawford v. Washington, 541 U.S. 36 (2004).

The district court erred in admitting this portion of exhibit 7, 5th 911 call. The court of appeals for the Eighth circuit should overturn the conviction for the reasons above.

b. Federal Rules of Evidence 403.

Federal Rules of Evidence 403 provides that A district Court may exclude evidence if "its probative value is substantially outweighed by the danger of unfair prejudice ... or by Considerations of, ... needless presentation of Cumulative evidence". Fed. R. Evid. 403 And This is EXACTLY what The District Judge did when granting The petitioner's pre-trial Limine. (see page 26 of 59) Lines 15-25,

This 911 call statement contained in the fifth 911 call should of been excluded because of its probative value was substantially outweighed by its unfair prejudice to the petitioner (Robertson);

Unfair prejudice is prejudice which is not merely detrimental to A party's case but tends to suggest A decision on an improper basis. *Wade V. Haynes*, 663 F. 2d 778, 783 (8th Cir 1981). Unfair prejudice "speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief V. United States*, 519 U.S. 172, 180 (1997).

The district Court noted on the Record that it did not think that the unfair prejudice outweighs value of Just Keeping in that (Statement). In the Fifth call (T. T. 18:3-4) However, the district Court never really noted any probative value at all to the statement portion of the Fifth 911 call, and forgot its earlier Ruling on the same matter, during the pretrial Conference, that all the information pertaining to the incident on March 2nd 2017 was excluded when the district Court ruled in favor of the defendant (petitioner) by granting the defense Limine. Stating on the Record that the evidence did outweigh the probative value.

The unfair prejudice of this statement, in contrast, was substantial. It was highly prejudicial to Robertson as it was offered to show his propensity (specifically that he "shot a gun over there the prior month", in which the incident where a shot was taken at the petitioner earlier the same month. And this statement placed

the petitioner before the Jury as a bad person deserving of Conviction. See, e.g., United States v. Mothershead, 859 F.2d 585, 590 (8th Cir 1988)

holding the district Court committed reversible error in prosecution for bank Robbery in admitting evidence of the defendant's ten year-old conviction of possessing stolen funds where there would be a "devastatingly prejudicial impact of such evidence in the minds of the Jury" This evidence was noticed under 404(b) prior to trial and was excluded. See; pretrial conference 26 of 59 - Lines 15-25, The call, The fifth 911 call statement was in - Admissible under Rule 404(b) and Rule 403.

2. The "Marijuana Evidence" Should Have Been Excluded Under 403.

The introduction of evidence that Urvin Quick-Bear, Sr. owed \$ 20 to the petitioner for marijuana was admitted by the district court as the "res gestae of the crime." (T.T. 2016-8) Under the theory of res gestae, evidence of prior crimes can be admitted when the prior crime is so blended or connected, with the one on trial as that proof of one incidentally involves the other; or explains the circumstances thereof; or tends logically to prove any element of the crime charged.

United States v. Riebold, 135 F.3d 1226, 1229 (8th Cir 1998) (citations omitted).

The testimony that Robertson, the (petitioner) sold Mr. Quick Bear Sr. marijuana did not logically prove any element of the crimes charged. It was not relevant evidence as defined in Federal Rule of Evidence 401. See Fed. R. Evid 401 (defining relevant evidence as "having a tendency to make a fact more or less probable than it would be without the evidence" and

the fact is of consequence in determining the action). in this case at Trial Mr. WUVA Quickbear Sr. stated on the Record on stand that he guessed the marijuana was bought from the petitioner Robertson, and also that he gave his son WUVA Quickbear Jr. \$20.00 to buy the marijuana, (he) WUVA Quickbear Sr. never stated his son told him he purchased the marijuana from the petitioner, and when the son was asked he stated he had no knowledge of any debt owed by his father at the time of the incident, see trial - transcript at (WUVA Quickbear Jr) T.T. page 150 - Lines 20-25 and 151 - Lines 1-5. Also (WUVA Quickbear Sr.) T.T. page 63 of 118, Lines 21-25 and page 64 of 118, Lines 1-25 and page 65 of 118, Lines 1-2. Then T.T. page 93 of 118, Lines 19-25, and page 94 of 118, Lines

1.

There was never any marijuana debtor transaction between the petitioner and the Quickbear's, and it proven by the Record, therefore the marijuana evidence should of not been admitted, and or upheld by the Court of Appeals for the Eighth Circuit.

Its probative value, if any, was substantially outweighed by the danger of unfair prejudice because: (1) it painted a picture of the petitioner (Robertson) as a drug dealer, to the jury. And (2) The prosecutor did not give notice of bringing this evidence till the last minute, right before jury selection, not giving the defense any time to put together a proper defense. This case did not start over any marijuana deal or debt, see t.t. of Urva Quickbear Jr. who states on the record that the incident started two different ways but none of these ways were a drug deal or debt see: t.t. page 150 lines 19-23 and page 151 lines 6-9. This is why the incident started not any later added drug deal or debt for marijuana, so there was no res-gestae of the crime and therefore the marijuana should not have been admitted by the District Court or upheld by the Court of Appeals for the Eighth Circuit.

3. The District Court should have Admonished the Jury After The prosecution's Cross-Examination of the petitioner (Robertson).

The prosecutor Finished his Cross-Examination of the petitioner by highlighting the argument that the petitioner had in his possession a Firearm in violation of the Law, but did not Charge the petitioner with a gun charge which should of made This Line of Questioning improper or at minimum the Court should of gave a instruction to The Jury to Cure the prejudice This Line of Questioning presented during Cross Examination of The petitioner, The defense asked The District Court to Read an instruction to The Jury to cure the unreversible error by the prosecutor in saying The petitioner committed a crime in possessing a gun to defend his-self, The instruction was United States v. panter, 688 F. 2d. 268 (5th Cir 1982) (holding that a convicted felon taking possession of a firearm to defend themselves is not guilty of an offense). (T.T. 512-14).

The district court refused to give an instruction, explaining that the preliminary instructions, given at the beginning of the trial, covered the point (Ct. t. 514).

The jury would not remember any instruction given at the beginning of a trial therefore at least the preliminary instruction should be read again to refresh the jury mind that the petitioner was on trial for only the crimes charged and nothing else.

The combination of cross-examining the petitioner (Robertson) on being a felon in illegal possession of a firearm without charging a crime for it, and impeaching the petitioner with "four felonies" created unfair prejudice to the petitioner trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "K. J. [unclear]", written over a horizontal line.

Date: 4-20-20