

No.
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER 2020 TERM

TYKEI GARNER
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

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QUESTION PRESENTED

Whether the Third Circuit Court of Appeals erred in affirming the District Court's Decision in allowing the Government to use a decade old New York City drug conviction which unfairly prejudiced Mr. Garner's Pennsylvania trial involving interstate transportation of narcotics and ultimately violated Petitioner's due process rights under the Constitution of the United States?

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PETITION FOR WRIT OF CERTIORARI TO THE
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TYKEI GARNER respectfully petitions the Court for a Writ of Certiorari to review the Judgment of the United States Court of Appeals which affirmed the United States District Court in this case. This Petition has been filed by his court-appointed counsel under 18 U.S. Code §3006A.

OPINIONS BELOW

On May 29, 2020, the United States Court of Appeals for the Third Circuit issued an Opinion. A copy of the Opinion is attached to this Petition as Appendix 1A. A copy of the Order is attached to this Petition as Appendix 2A. A

copy of the Court's Order denying a rehearing *en banc* on July 24 2020 is also attached as Appendix 3A.

JURISDICTION

A Writ of Certiorari is sought from an order of the United States Court of Appeals for the Third Circuit dated May 29, 2020 and subsequently July 24, 2020 denying Petitioner's En Banc Rehearing.

Jurisdiction is conferred upon this Court by 28 U.S.C. §1254(1), which grants the United States Supreme Court jurisdiction to review by Writ of Certiorari all final judgments of the court of appeals. Jurisdiction is also conferred upon this Court by 28 U.S.C. §1651(a) which grants the United States Supreme Court jurisdiction to issue all writs necessary or appropriate to aid of its respective jurisdiction and agreeable to the usages and principles of law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment :

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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 any person within its jurisdiction equal protection of the laws.

STATEMENT OF THE CASE

1. Petitioner Tykei Garner and Co-Defendant Jerry Fruit were charged on November 6, 2016 of conspiracy to distribute and to possess with intent to distribute a mixture and substance containing 100 grams or more of heroin in violation of 21 U.S.C. §861 (Count I) and possession with intent to distribute 100 grams or more of heroin and additional quantities of cocaine, in violation of 21 U.S.C. §841(a)(1) (Count II).

2. On March 23, 2017, the United States filed a Motion in Limine to include and use evidence of Garners' prior criminal involvement specifically, the 2007 New York City drug conviction in thier case in chief.

3. The District Court Judge ruled in favor of the United States and allowed the 2007 drug conviction into evidence during the trial.

4. This federal case involved transporting narcotics hidden deep within the trunk of a rented vehicle about 170 miles from New York City, near Harrisburg, Pennsylvania.

5. The federal case, tried in Harrisburg was a dissimilar case from Mr. Garner's street dealing drug conviction from a decade earlier in New York City.

6. This case involved Mr. Garner being a passenger in a vehicle rented by Co-Defendant Fruit, driven by Fruit and solely controlled by Fruit.

7. Heroin and cocaine were found deep inside the trunk of the rental vehicle hidden under other objects.

8. Following laboratory analysis, Garner's fingerprints were not found on the contraband.

9. There were no items of Garner's found in the trunk nor was there any evidence that he was ever in the trunk of the rental vehicle that was rented to the Co-Defendant Fruit.

10. Based on a weak evidentiary case against the passenger Garner, the Government introduced Garner's 2007 conviction for selling cocaine on a New York City street.

11. The District Court's reason for allowing the Government to admit the 2007 Cocaine conviction was that the Court felt it somehow went to the issue of intent.

12. The District Court refused the factor of the age of the conviction, factual circumstances involved with that conviction as being unrelated to the federal charges of trafficking cocaine and heroin in a vehicle 170 miles from New York City.

13. Rule 404(b) of the Federal Rules of Evidence provides that “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that a particular occasion the person acted in accordance with that character. Fed.R.Evd. 404(b)(1).

14. Such evidence may be admissible, however, “for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of intent.” Id. at 404(b)(2).

THIRD CIRCUIT’S 404(b) EVIDENCE AND OTHER CIRCUITS

15. The proponents of 404(b) evidence will normally be able to conceive a “proper purpose” other than propensity; but if this were sufficient to admit evidence, the basic idea embodied by 404(b), that simply because was act was committed in the past does not mean that a like act was committed, would be threatened. United States v. Smith, 725 F.2d 304, 345 (3d Cir. 2013).

16. The Third Circuit’s outdated case of United States v. Givan, 320 F.3d 452 (3d Cir. 2003) allowed a defendant’s prior conviction for distributing cocaine to be admissible to prove knowledge and intent to distribute heroin at trial.

17. The Third Circuit Court of Appeals upheld this reasoning that this evidence makes Defendant’s knowledge of the presence of heroin more probable than it would be without the evidence

and indicates that he had knowledge of drugs and distribution, thus making it less likely that he was in the wrong place at the wrong time.

18. The Third Circuit Court of Appeals failed to take into account that there are likely differences in street level dealing of drugs and interstate drug trafficking.

19. It would be preferred that the District Court weigh the decade-old conviction with analysis.

20. A vast amount of other circuits take an approach that focuses more on the similarity of offenses, as well as the remoteness in time.

21. The Supreme Court should adopt a better approach for all the circuits taken in that there is a split between the courts.

22. The relevance of Petitioner's prior conviction boils down to the prohibited "once a drug dealer, always a drug dealer" argument.

22. In United States v. Brown, 71 F.3d 1158, (5th Cir. 1995). Brown was convicted of possession of crack with intent to distribute. At trial, the prosecution introduced evidence that the Defendant had previously been convicted of possession with intent to distribute crack cocaine.

23. On appeal, the Fifth Circuit stated that while at times the Court will affirm the admission of 404(b) evidence in order to show the defendant acted

according to a certain *modus operandi* , the admissibility of such testimony normally depends on the factual similarity between the prior bad act and the act alleged in the case.

24. The Fifth Circuit found that there must be a similarity of acts in order to admit the prior conviction.

25. The Fourth Circuit has held that in the context of prior drug convictions, in particular, that the fact that the Defendant may have been involved in drug activity in the past does not in and of itself provide a sufficient nexus to the charged conduct where the prior activity is not related in time, manner, place or pattern of conduct. United States v. Johnson, 617 F.3d 286, 297 (4th Cir. 2010).

26. In United States v. Bell, 516 F.3d 432 (6th Cir. 2008), the Sixth Circuit Court found that whether evidence of a defendant's prior drug conviction was probative on the issue of intent, the evidence must relate to the conduct and be substantially similar and reasonably near in time to this specific intent of the offense at issue.

27. Petitioner specifically requests this Court review the Third Circuit's rationale in Givan and set a better standard of due process for individuals previously convicted of drug crimes.

28. As it stands in the Third Circuit, someone's previous drug conviction will always haunt

them in any future case involving narcotics no matter how dissimilar the cases may be.

REASON FOR GRANTING THE WRIT OF CERTIORARI

The reason for granting the writ of certiorari in this case is very simple: The Third Circuit Court for the United States is out of step with the other Circuits regarding allowance of a person's previous convictions to haunt them forever. The Third Circuit fails to address there are better standards for allowing previous unrelated convictions in criminal trials. This is clearly a violation of Petitioner's due process rights and he requests this case to be heard by this Honorable Court.

CONCLUSION

For all the reasons stated, the Petitioner, Tykei Garner, respectfully requests that his Petition for Writ of Certiorari be granted, and that this Court accept his case for review.

CERTIFICATE OF MEMBERSHIP IN BAR

I, JOHN YANINEK, counsel for Petitioner, hereby certify that I am a member of the Bar of this Court.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Writ of Certiorari to the United States Supreme Court was mailed this 22nd day of October, 2020, to the following:

Keith M Donoghue, Esq
Scott R. Ford, Esq
United States Attorney's Office
Middle District of Pennsylvania
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**DECLARATION PURSUANT TO RULE 29.2
OF THE RULES OF THE SUPREME COURT**

I declare under penalty of perjury under the laws of the United States of America that the Petition for Writ of Certiorari of Tykei Garner was mailed to the Clerk's Office of the United States Supreme Court in Washington D.C., postage paid and fees paid (USC-426), First Class Mail.

Date: 10/20/20

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