No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BYRON JONES,
Petitioner

v.

UNITED STATES,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS,
CASE NO. 19-30935
JOLLY, JONES, SOUTHWICK, CIRCUIT JUDGES.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Fifth Circuit Court of Appeals err when it found that Byron Jones was guilty of a RICO conspiracy?

2. Did the Fifth Circuit Court of Appeals err when it affirmed the District Court's decision allowing the Government to introduce evidence of "witness intimidation" which occurred mid-trial and under circumstnaces the Govenrment was solely positioned to prevent?

3. Did the Fifth Circuit Court of Appeals err when it found that the District Court's admission of jail calls through a non party witness was reasonable?

4. Did the Fifth Circuit Court of Appeals err when it refused to give jury instructions properly requested by the defense?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

1. Defendant-Appellant: Byron Jones;

2. Counsel for Plaintiff-Appellee: United States Attorney Kenneth Allen Polite, Jr., and Assistant United States Attorneys Nolan Paige, Marquest Meeks, Brian Ebarb;

3. Counsel for Defendant-Appellant: Rachel Conner;

   Former Counsel for Defendant-Appellant: Michael Riehlmann;

4. Co-defendants: Deloyd Jones and his counsel Ada Phleger (appeal) and Dwight Doskey (trial); Sidney Patterson and his counsel Autumn Town (appeal) and Jason Williams and Nandi Campbell (trial).

LIST OF ALL RELATED PROCEEDINGS

The following proceedings are directly related to this case:

1. *United States v. Byron Jones*, No. 13-205 (E.D. La.), 05/05/2016
2. *United States v. Byron Jones*, No. 16-30525 (5th Cir.), 10/13/2017
3. *United States v. Byron Jones*, No. 13-205 (E.D. La.), 02/26/2018
4. *United States v. Byron Jones*, No. 18-30256 (5th Cir.), 08/12/2019
5. *United States v. Byron Jones*, No. 13-205 (E.D. La.), 11/07/2019
6. *United States v. Byron Jones*, 810 Fed.Appx. 333, 334 (5th Cir.6/23/2020)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Cases

Rules and Statutes

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

[X] 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
[X] is unpublished and can be found at *United States v. Byron Jones,* 810 Fed.Appx. 333, 334 (5th Cir.2020) decided on 6/23/2020.

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 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 23, 2020 .

[X] 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). The United States Fifth Circuit Court of Appeals decided this case on. Rehearing was not sought. 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

The Fifth Amendment of the U.S. Constitution provides in pertinent part, "No person shall be … deprived of life, liberty, or property, without due process of law…" U.S. Const. amend. V.

The Sixth Amendment of the U.S. Constitution provides in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right … 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." U.S. Const. amend. VI.

The Fourteenth Amendment of the U.S. Constitution provides: "No State shall .. deprive deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

In 2011, law enforcement, led by Special Agent Jennifer Doreck, began an investigation into "Ride Or Die" ("ROD"), a group of young men and women alleged by the government to be a "gang" located in the Eighth Ward of New Orleans. Special Agent Doreck testified that over the course of her investigation, she listened to hundreds of recorded jail phone calls made by alleged members of ROD, whose voices were identified by cooperating witnesses Andrealie Lewis and Erick Garrison. In addition, she testified that she reviewed NOPD police reports dating back to 2007.

The government alleged that ROD was a criminal enterprise whose mission was to sell crack and other drugs in the Eighth Ward and to protect their territory with guns and violence. The government further alleged that Byron Jones, who had grown up in the Eighth Ward, but had moved to New Orleans East and parts of the West Bank of New Orleans following Hurricane Katrina, was a member of ROD.

On September 19, 2013, Byron Jones was indicted by a federal grand jury on nine separate counts:

Count One:	Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act ("RICO") in violation of 18 U.S.C. § 1962(d);
Count Two:	Conspiracy to Distribute Controlled Dangerous Substances in violation of 21 U.S.C. § 841(a)(1) and 846;
Count Three:	Conspiracy to Possess Firearms in Furtherance of a Drug Trafficking Crime in violation of 18 U.S.C. § 924(o);
Count Five:	Murder in Aid of Racketeering in violation of the laws of the State of Louisiana, La.R.S. 14:30.1(A)(1) and 24; all in violation of 18 U.S.C. §§1959(a)(1)(2);
Count Six:	Causing Death Through the Use of a Firearm in violation of 18 U.S.C. 1111; 18 U.S.C. §§924(j) and U.S.C. §2;

Count Seven:	Assault with a Dangerous Weapon in Aid of Racketeering in violation of the laws of the State of Louisiana, La.R.S. 14:37 and 14:24; 18 U.S.C. §1959(a)(3) and 2;
Count Eight:	Use and Carrying of a Firearm During and in Relation to a Crime of Violence and a Drug Trafficking Crime;
Count Nine:	Assault With a Dangerous Weapon in Aid of Racketeering 21 U.S.C. §846 and 18 U.S.C. §924(c)(1)(A) and 18 U.S.C. § 2; and
Count Ten:	Use and Carrying of a Firearm During and in Relation to a Crime of Violence and a Drug Trafficking Crime in violation of the laws of the State of Louisiana, La.R.S. 14:37 and 14:24; 18 U.S.C. §1959(a)(3) and 18 U.S.C. §2.

During discovery, the government provided the defense with a compact disc containing 110 telephone recordings, along with transcripts, intended for use at trial. Byron Jones moved, via pretrial motion, to exclude the conversations of individuals who were not identified as either defendants in the case or as unindicted co-conspirators.

Byron Jones proceeded to trial, along with Deloyd Jones and Sidney Patterson, on August 17, 2015. The district court held that one objection would preserve the issue for all defendants.

The defense and the government stipulated that during the time period between November 20, 2006 though to November 15, 2011, under eleven (11) separate NOPD Item numbers, the New Orleans Police Department seized 57.51 grams of cocaine base, 283.21 grams of marijuana, and 15 oxycodone pills from the alleged co-conspirators.

The defense and the government likewise stipulated to the authenticity of thirty-two (32) phone calls entered under Government Exhibits 130A–161A as being recorded by the Orleans Parish Prison.

At trial, the government sought to show the jury that ROD "trafficked for the most part crack cocaine, they possessed guns, and they unleashed violence in the name of Ride Or Die."

The government opened their case with a video shot by Jeremi Brock, an amateur videographer who, in early 2011, was working on a film project called "New Orleans Exposed." According to Brock, the project was intended to "document[] everything that goes on in the neighborhoods. Everything as far wise as if you can rap or whatever – whatever you want to do on my camera at that time, when I come to your neighborhood, I'm going to film you. You can do whatever you want to do on there. You can dunk a basketball, go ahead and dunk it." In January 2011, Brock filmed in the Eighth Ward. The government introduced both the video and still shots from "New Orleans Exposed."

The film purported to show members of the "Eighth Ward" representing their neighborhood and contained images of both Sidney Patterson and Deloyd Jones. The government stipulated that Byron Jones did not appear in the video. Nor was there any mention of Byron Jones during the audio of the "New Orleans Exposed" video. In fact, at the time of the filming, Byron Jones was incarcerated, serving a five year state sentence for accessory after the fact to Travis Arnold's murder.

After the video in which Byron Jones did not appear, the government presented the testimony of Perry Hall, a 58 year old man, who testified that from October 2010 through to December 2011, his house at 1632 Mandeville Street in the Eighth Ward, had been "taken over" by members of ROD, who used it to cut up and package crack cocaine, which they sold from his porch and from the corner of Mandeville and Derbigny Streets. Mr. Hall testified that he had been addicted to crack cocaine since the age of fifteen years old. Hall testified that in November 2010, he was approached by co-defendant-turned-government-witness Andrealie Lewis, aka "Noot," who gave him "as much crack as he wanted." Perry Hall testified that during that time period, he was smoking 25-30 rocks of crack cocaine a day. Shortly thereafter, Lewis was coming over 2-3 times per day to package crack at Hall's house. Hall testified that "in 2010 around Christmas they had over 16, 17 guys in my house" there to cut up crack cocaine, stash their guns, and party. Hall testified that the people in his house were members of "Ride Or Die." Hall listed their names: "Nut, Puggy, Duda Man, Tre, Peanut, ManMan, Tweet, Perry, Morris, Nyson, Noot, Baldy, Danielle, LaLa… Head, DJ, T… Stank."

During his testimony, Perry Hall never mentioned the name Byron Jones or "Big Baby." Perry Hall testified that he had never seen Byron Jones before.

Following Hall's testimony, the government proceeded to introduce a scattershot litany of testimony related to the prior convictions of the defendants and alleged co-conspirators: Miosha Walker (2007 NOPD juvenile arrest of Deloyd Jones with a firearm); Clerence Gray (2007 NOPD juvenile arrest of Deloyd Jones with a

stolen firearm); Michael Pierce (2008 juvenile arrest of Sidney Patterson with simple possession amount of crack cocaine); Athena Monteleone (2007 arrest of Byron Jones with a firearm); Nicholas Gernon (2008 arrest of Byron Jones for possession of marijuana and firearm); Chad Perez (2008 arrest of Tre Clements for crack cocaine and a firearm); Jason Gagliano (2009 arrest of Deloyd Jones and Byron Jones for stealing a "Bait Car" and possession of firearms); Ananie Mitchell (2010 and 2011 arrests of Romalis Parker for possession of controlled dangerous substances and firearm); Michael Sinegar (2010 arrest of Romalis Parker for possession of assault rifle); Cory Foy (2010 arrest of Byron Jones for possession of concealed firearm); Jehan Senanayake (2010 arrest of Sidney Patterson for possession of stolen property); Travis Brooks (2009 arrest of Tre Clements for possession of firearm); Nathaniel Joseph (2009 arrest of Ervin Spooner, Tre Clements, and Morris Summers for traffic violations); Willard Pearson (2013 arrest of Tyrone Burton for possession of concealed firearm); Rodney Vicknair (2011 arrest of Sidney Patterson for possession of stolen vehicle); and Joseph Davis (2012 arrest of Tyrone Burton for curfew violation, possession of a firearm).

Not one of the law enforcement witnesses who testified to the facts of the prior convictions listed above drew any link between those convictions and a pattern of racketeering between the convictions, the defendants' alleged membership in Ride Or Die, or Byron Jones' alleged participation in the charged conspiracies.

The government presented numerous phone calls recorded from Orleans Parish Prison. Of the hundreds of phone calls listened to by Agent Doreck during her

investigation of Ride Or Die, and in spite of the government's allegations that there were "multiple" calls involving Byron Jones discussing "the criminal activity of the enterprise," only one call was alleged to contain any relevant information related to Byron Jones. The government played a phone call, entered as Government Exhibits 134a and b, in which two people, who never identify each other by name, had a conversation. Agent Doreck testified that the speakers were Deloyd Jones and Byron Jones. However, neither of the government's cooperating witnesses, Andrealie Lewis nor Erick Garrison, who testified that they were intimately familiar with ROD, were able to identify the voice alleged by Agent Doreck to be to Byron Jones' voice.

Midway through trial, government sought to bolster their case by introducing evidence, through cooperating witness Jamal Holmes, that while they were in lock-up during a lunch break under U.S. Marshal supervision, the defendants intimidated witnesses by calling Darryl Arnold a "rat" and by praising witness Sean Watts for refusing to identify anyone during his testimony.

After the incident, the government moved the defendants to a separate floor from the cooperating witnesses. In spite of its initial disapproval that the government would create an atmosphere where the defendants could communicate with cooperating witnesses, the district court eventually allowed the government to call Holmes to testify regarding the alleged threats by the defendants to the cooperating witnesses. Holmes later testified that he did not hear Byron Jones "say too much" during the incident.

With respect to Byron Jones, at trial, the government introduced evidence that Byron Jones' alleged involvement in ROD and the charged conspiracies consisted of the following incidents:

- A juvenile arrest from December 22, 2007, for possession of a firearm, ammunition and marijuana. At the time of his arrest, Byron Jones was in the company of two young men who were never associated with ROD, one of whom, James Sansone, was from Denham Springs, Louisiana, and the other was a juvenile from a different part of Louisiana. At the time of this arrest, Byron Jones was living in Harvey, Louisiana, in Jefferson Parish miles from the Eighth Ward of New Orleans. This conviction was not connected through any evidence at trial to ROD or the charged conspiracies;

- An arrest on December 27, 2008 at Byron Jones' home at 7616 Ligustrum Drive in New Orleans East. NOPD officers recovered 26 grams of marijuana along with a firearm. Also present in the home were Byron Jones' mother, his girlfriend, and two children. Byron Jones pled guilty to attempted possession with intent to distribute marijuana and possession of a firearm with a controlled dangerous substance. This conviction was not connected through any evidence at trial to ROD or the charged conspiracies;

- On July 18, 2009, Byron Jones and Deloyd Jones were arrested for stealing a bait vehicle and were later arrested for possession of two stolen firearms. While both Byron Jones and Deloyd Jones were alleged to be "members" of ROD and while this activity is certainly criminal, the government did not present any evidence

at trial to show how the stealing of the bait car or possession of these firearms was connected to membership in ROD or in furtherance of the charged conspiracies;

- On February 24, 2010, Byron Jones was accused of driving the car from which Sidney Patterson shot Isaac Rowel and shot and killed Travis Arnold. On February 9, 2011, Byron Jones pled guilty in Orleans Parish Criminal District Court to accessory after the fact to second degree murder of Travis Arnold. The government did not present any evidence at trial to show how the murder of Travis Arnold and shooting of Isaac Rowel was related in any way to membership in ROD or the charged conspiracies. The government did not present evidence that these assaults were somehow related to retaliating against rivals, eliminating competition, or because the defendant knew that it was expected of him by reason of his membership in ROD;

- On April 29, 2010, Byron Jones was accused of shooting Ernest Augustine in his car while he was parked in front of the Magnolia Discount Store in the Eighth Ward. On April 29, 2010, Ernest Augustine went to the Magnolia Discount Store on Mandeville and Derbigny to buy a cigar. He was sitting in his black Cadillac truck when someone opened fire. He was struck five times. Mr. Augustine testified that he did not see who shot him. Mr. Augustine went inside the store until the paramedics arrived. Detective Valencia Pedescleaux testified that she arrived at the scene while Augustine was at the Magnolia Discount. Pedescleaux testified that Augustine described the person who shot him as a black male with a slender build, wearing a black baseball cap, a black t-shirt, black pants and black boots. Byron Jones, whose nickname is "Big Baby," stands 5'4" and weighs 230 lbs.

Notwithstanding Ernest Augustine's description of a shooter whose appearance differed extremely from Byron Jones, the government did not present any evidence at trial to show how the shooting of Ernest Augustine was related in any way to membership in ROD or the charged conspiracies. The government did not present evidence that Ernest Augustine was a rival, competitor or that this assault was somehow expected of Byron Jones by reason of his membership in ROD. The Fifth Circuit agreed, finding that there was insufficient evidence relating the shooting of Ernet Augstine to Byron Jones' alleged membership in Ride or Die and vacating the convictions on Counts 9 and 10, *United States v. Jones*, 873 F.3d 482, 493 (5th Cir.2017);

- On May 10, 2010, Byron Jones was arrested for possession with a firearm on the West Bank, where his residence was listed as 3714 Garden Oaks in Algiers, Louisiana. While he was incarcerated, Byron Jones was re-booked and eventually pled guilty to accessory after the fact to the second degree murder of Travis Arnold.

Special Agent Jenifer Doreck testified that Byron Jones had never been arrested in the area of the Eighth Ward for selling drugs, there were no photos of Byron Jones associated with ROD on Facebook, of the hundreds of calls she listened to there was arguably one that related to Byron Jones but neither of the cooperators could identify him, he did not appear in Brock's video "New Orleans Exposed," no one mentioned his name in the audio, he was not involved in any way in the murder of Rodney Coleman, the assaults on Marquisa Coleman and Jimmy Joseph, the murder

of Corey Blue, the murder of Devin Hutton, the assault of Sean Watts, or the assault of Victor Guy, and he was not involved in any way in the drug trafficking at Perry Hall's residence on Mandeville Street. If we are to believe Noot, Byron Jones sold crack one time in the Eighth Ward sometime between 2008 and 2010.

Byron Jones has been incarcerated consistently since May 10, 2010. While Byron Jones is certainly no stranger to criminal activity, there was simply insufficient evidence adduced at trial to establish that he was in a conspiracy with the nebulous ROD.

At the conclusion of the government's case, defense counsel orally moved for a judgment of acquittal under Fed.R.Crim.P. 29. No evidence was presented on behalf of any of the defendants. Defense counsel requested jury instructions on "accessory after the fact" to intentional second degree murder under Louisiana state law and "parties to a crime." The district court denied the requested instructions.

During deliberations, the jury sent in multiple questions specifically regarding the mental state required to find a defendant guilty of murder under Louisiana law versus the mental state required to find a defendant guilty of a murder committed pursuant to a racketeering enterprise.

On August 28, 2015, the jury found Byron Jones guilty of Counts 1, 2, 3, 5, 6, 7, 8, 9, and 10. With respect to Count 1, the jury unanimously found that Byron Jones, as a result of his own direct conduct and/or the reasonably foreseeable conduct of his co-conspirators in furtherance of the conspiracy as a whole, conspired to distribute and possess with intent to distribute 280 grams of cocaine base ("crack cocaine") in

furtherance of the conspiracy. The jury did not unanimously find that Byron Jones intentionally committed the February 24, 2010 murder of Travis Arnold in violation of Louisiana law.

On May 4, 2016, Byron Jones was sentenced to serve a life term as to counts 1 and 5, 240 months as to each of counts 2, 3, 6, 7, and 9, all to be served concurrently. In addition, he was sentenced to serve 120 months as to count 8 and 300 months as to count 10, to be served consecutively to each other and to the sentence imposed on all other counts.

Byron Jones filed a motion for post-verdict judgment of acquittal and a new trial, seeking a judgment of acquittal with respect to Counts 1, 2, 3, 9, and 10 of the Indictment, and a new trial on Counts 5, 6, 7, and 8. Defense counsel argued that the government failed to produce sufficient evidence of an association in fact in support of the conspiracy charges. Relying almost exclusively on the drug trafficking activities of ROD which occurred at the residence of Perry Hall on Mandeville and Derbigny Streets, the district court found sufficient evidence of an association in fact. *United States v. Byron Jones*, CR 13-205, 2016 WL 1383656, at *5 (E.D. La. Apr. 7, 2016). There was no evidence at trial that Byron Jones had any involvement whatsoever in the drug trafficking activities that occurred at Perry Hall's residence. In fact, Hall testified that he had never laid eyes on Byron Jones.

The district court denied relief. Id.

On direct appeal, the Fifth Circuit Court of Appeals found insufficient evidence of Byron Jones' convictions on Counts 9 & 10 related to the shooting of Ernest

Augustine and affirmed all other counts. *United States v. Byron Jones*, 873 F.3d 482, 500 (5th Cir.2017).

Following resentencing, Byron Jones filed a second Notice of Appeal arguing that his convictions under 18 U.S.C. § 924 convictions were unconstitutional under *Sessions v. Dimaya*, 138 S.Ct. 1204; 200 L.Ed.2d 549 (2018) and *United States v. Davis*, 903 F.3d 483 (5th Cir. 2018). The Fifth Circuit agreed and vacated Byron Jones' convictions on Counts 3, 6, and 8.

Following resentencing, Byron Jones filed a third Notice of Appeal. The Fifth Circuit affirmed Byron Jones' convictions and sentences. *United States v. Byron Jones*, 810 Fed.Appx. 333, 334 (5th Cir.6/23/2020).

This Petition follows.

REASONS FOR GRANTING THE PETITION

The government's case at trial established that the Ride or Die Committee, previously known as I'm So Gangsta, was comprised of a group of loosely related young men and women, who grew up in the same neighborhood, gave themselves the unfortunate nickname of "Ride Or Die" as young teenagers, and that some of them individually accrued lengthy, but, in the case of Byron Jones, unrelated, criminal records.

While the government presented evidence that certain of the co-conspirators, who also claimed membership in the amorphous "ROD," were at different points jointly involved in drug trafficking and violence, the government utterly failed to show that merely associating oneself with ROD, without more, in and of itself constituted an agreement in perpetuity to enter into a criminal enterprise with the

other "members." Specifically, the government failed to show that Byron Jones' association as childhood friends and co-defendants with some of the members of ROD until he was incarcerated in May 2010 constituted an agreement to enter into a criminal enterprise with the common purpose to commit a pattern of racketeering activities.

Byron Jones is guilty of several serious criminal offenses, offenses for which he was charged, convicted and punished in state court. But he is not guilty of being a participant in the multiple conspiracies associated with Ride Or Die which were argued by the government at trial.

Furthermore, following trial, defense counsel repeatedly requested that the district court instruct the jury as to the legal definition of "accessory after the fact" and "parties to a crime." The district court refused to give the requested instruction. These instructions would have informed the jury that in order to find someone guilty as a principal of intentional second degree murder under Louisiana law, the offender is required to have the specific intent to kill or inflict great bodily harm. The district court read the jury only the Louisiana statute related to "principal liability," which does not state that in order to be found guilty of being a principal, the offender must have specific intent.

During deliberations, the jury asked multiple questions specifically regarding the required mental state required in order to be found guilty as a principal to murder. Significantly, the jury did not find Byron Jones guilty of the intentional murder of Travis Arnold as a special condition to Count 1. They did, however, find

Byron Jones guilty of the murder in aid of racketeering of Travis Arnold in Count 5, indicating that they did not believe that Byron Jones possessed specific intent to kill Travis Arnold, but erroneously believed that they should find him guilty of murder in aid of racketeering based on co-conspirator liability. The failure to give this requested instruction affected Byron Jones' substantial rights and, under the circumstances, warrants a new trial on this basis.

I. THE COURT SHOULD GRANT THE WRIT BECAUSE THE FIFTH CIRCUIT COURT OF APPEALS ERRONEOUSLY FOUND THAT THERE WAS SUFFICIENT EVIDENCE THAT BYRON JONES WAS GUILTY OF A RICO CONSPIRACY.

The evidence produced at trial was insufficient to support Byron Jones' convictions and this Court should reverse because it would allow for too broad a definition of the concept of a criminal enterprise, allowing for the separate criminal prosecution of unrelated criminal activity under the RICO Conspiracy Statute.

The jury's verdict, finding Byron Jones guilty of all nine charged offenses was legally unsupported by the evidence and allows for too broad a definition of "criminal enterprise."

a. The evidence produced at trial was legally insufficient to support Byron Jones' conviction of the substantive RICO conspiracy, 18 U.S.C. § 1962 (c) (Count One).

The substantive RICO provision, 18 U.S.C. § 1962(c), prohibits "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." United States v. Delgado, 401 F.3d 290, 297 (5th

Cir.2005). "To establish a violation of § 1962(c) the government must prove (1) the existence of an enterprise; (2) the activities of the enterprise affect interstate or foreign commerce, (3) that the defendant was 'employed by' or 'associated with' the enterprise, (4) that the defendant participated in the conduct of the enterprise's affairs, and (5) that the participation was through 'a pattern of racketeering activity.'" United States v. Posada–Rios, 158 F.3d 832, 855 (5th Cir.1998) (citing United States v. Erwin, 793 F.2d 656, 670 (5th Cir. 1986)).

i. Ride Or Die was not an "enterprise" as required in the RICO statute.

The term "enterprise" is statutorily defined as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). In *Turkette,* the United States Supreme Court held that "an enterprise includes any union or group of individuals associated in fact" and that RICO reaches "a group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 2528, 69 L.Ed.2d 246 (1981). Such an enterprise "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Id*., at 583, 101 S.Ct. 2524.

The evidence produced by the government was legally insufficient to support a finding that Ride Or Die operated as an "enterprise" within the legal meaning of the term. Testifying for the government, Erick Garrison, explained that he was present when "Ride Or Die" was founded because "we was on St. Roch park and were hanging

out having fun." Garrison testified that St. Roch Park opened after Hurricane Katrina as a trailer park. Rather than being "founded" in any organizational sense, Garrison testified that:

> "… Dakota was telling Peewee that 'I don't know why y'all call y'all self ISG, I'm So Gangsta. 'That's whack or lame or whatever. Y'all need to change it; come up with a better name like that." And she was, like, "I think y'all should do Ride Or Die Committee" and that what started from Ride Or Die Committee. And then we just stopped saying, 'committee' and just started saying, 'ROD'." ROA. 2525.

The name was a way for the group of teenagers who lived in the St. Roch Park trailers to identify themselves despite their neighborhood having been scattered by Hurricane Katrina. Garrison testified that ROD was formed because "they were born in the same neighborhood, grew up together. Went to the same schools." Garrison explained:

> "it ain't hard to be Ride or Die. If you friends with all of us and you friends with all us and you hang in the Eighth Ward with all of us and you consider yourself Ride Or Die and us friends, yeah, you could be Ride or Die. It ain't hard. It ain't like no Bloods and no Crips and you got to get jumped in or nothing like that." ROA. 2528.

Although some of the individuals that called themselves "ROD" ran the streets, "hustling," selling drugs, carrying guns, and stealing cars, "ROD" over time was not a cohesive group with a "common purpose of engaging in a course of conduct." Garrison testified that the individuals who aligned themselves with "ROD" didn't purchase drugs together, didn't buy drugs from a common source, didn't distribute together or pool their money to buy drugs. If they were selling drugs, they each had their "own hustle." For Garrison's part, he testified that he didn't sell drugs because "I ain't no good at hustling. I like to do other things with my time."

Another government witness, Aaron Rudolph, testified similarly:

> "Ride Or Die is just a bunch of young men who really like hanging out. We all been through the same growing up, all grew up the same. Basically different personality, different attitudes but all feel where each other coming from. We all decided to hang out and be brothers and that's basically it about Ride Or Die… There was no "leader – it was just a group of guys.

Rudolph testified that they were "all their own men." Those that did sell drugs operated completely independently from one another. They didn't share money. Whatever money Rudolph made selling drugs, he kept. There was no "pooling of resources." Government witness Andrealie Lewis testified that her money was her money: "I ain't hustle for nobody. I hustle for myself."

ii. Ride Or Die did not have a "common purpose" as required by the RICO statute.

From the terms of the RICO statute, an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose. An association-in-fact enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct." *Turkette*, 452 U.S., at 583, 101 S.Ct. 2524.

In *Turkette*, the United States Supreme Court explained that the requirement that an "enterprise" must have a purpose is apparent from the meaning of the term in ordinary usage, i.e., a "venture," "undertaking," or "project." *Turkette*, 452 U.S., at 583, 101 S.Ct. 2524 citing Webster's Third New International Dictionary 757 (1976). The concept of "association" requires both interpersonal relationships and a common

interest. See id., at 132 (defining "association" as "an organization of persons having a common interest"); Black's Law Dictionary 156 (rev. 4th ed.1968) (defining "association" as a "collection of persons who have joined together for a certain object"). Id.

In determining whether or not the participants were engaged with a common purpose, courts have looked at the degree of interdependence of the actions of members of the conspiracy, whether the activities of one aspect of the scheme are necessary or advantageous to the success of another aspect of the scheme. *United States v. DeVarona,*872 F.2d 114, 118 (5th Cir.1989).

In the Indictment, the government alleged that the purpose of the "enterprise" known as Ride Or Die was to: (1) enrich the members and associates of the enterprise through, among other things, the control of and participation in the distribution of controlled substances in the territory controlled by the enterprise; (2) preserve and protecting the power, territory and profits of the enterprise through the use of intimidation, violence, and threats of violence, including aggravated assault, robbery and murder; (3) keep victims, potential victims, and witnesses in fear of the enterprise and in fear of its members and associates through violence and threats of violence; (4) provide information to members and associates of the enterprise, including those who were incarcerated for committing acts of violence, robbery, distribution of controlled substances, and other offenses; and (5) provide assistance to members and associates of the enterprise who committed crimes for and on behalf of the enterprise in order to hinder, obstruct, and prevent law enforcement officers

from identifying the offender or offenders, apprehending the offender or offenders, and prosecuting and punishing the offender or offenders.

While there was evidence that, particularly with respect to the activities that occurred at Perry Hall's house, there may have been pooling of resources, mutual access to firearms, or protection of turf, there was no evidence that every member associated with ROD was involved in those activities.

Specifically, the government produced absolutely no evidence that connected Byron Jones with a "common interest" related to anyone else associated with Ride Or Die. Byron Jones was not connected to any activity that enriched other members of Ride Or Die by distributing controlled substances in the Eighth Ward. Byron Lewis had no involvement with the cooption of Perry Hall's house or the activities there.

Andrealie "Noot" Lewis was the only witness to testify that Byron Jones sold crack in the Eighth Ward and even she testified that "sometime between 2008 and 2010," she had seen Byron sell crack "like one time" when he "caught a sale in front of me before while be hustling at, like he was on one end and I was in the middle of the block." Even assuming arguendo that Lewis' testimony can be believed, the evidence of a single sale of crack by Byron Jones in the Eighth Ward fails to establish that Byron Jones' alleged drug sale in any way enriched the Ride Or Die.

Likewise, while there were allegations that Byron Jones was involved in violence with respect to Ernest Augustine, Travis Arnold, and Isaac Rowel, there was no evidence that these acts, if proved, had any connection to ROD, to protection of territory, punishment of rivals or competition, or in any way furthered the interests

of ROD. Assuming for argument's sake that Jones was involved in those assaults, there could be any number of reasons, wholly unrelated to ROD, for those attacks. There simply was no evidence adduced at trial associating the acts of violence of which Byron Jones was accused with the general "mission" of ROD. Likewise, the one unauthenticated phone call attributed to Byron Jones among hundreds of recorded jail calls does not establish that he was providing information or assistance to any other members in furtherance of a conspiracy.

iii. Byron Jones' criminal convictions constituted the unrelated criminal history of a multiple offender, not a "pattern of racketeering activity."

In order to show the existence of a pattern of racketeering activity, the government must establish (1) that the racketeering acts are related and (2) that they amount to or pose a threat of continued criminal activity. *H.J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).

Byron Jones has a criminal record that is a matter of undisputed record, spanning from 2007, when he was a juvenile to May 10, 2010, when he was last arrested. The government, however, failed to establish through any competent evidence that those convictions and allegations are related to any common purpose other than establishing the criminality of Byron Jones.

b. The evidence produced at trial was legally insufficient to support Byron Jones' conviction of the drug conspiracy (Count Two)

To establish guilt of a drug conspiracy under 21 U.S.C. §§ 841(a)(1) and 846, the government must prove beyond a reasonable doubt (1) the existence of an agreement between two or more persons to commit one or more violations of the

narcotics laws and (2) the defendant's knowledge of, (3) intention to join, and (4) voluntary participation in the conspiracy. *United States v. Velgar-Vivero*, 8 F.3d 236, 239 (5th Cir.1993), cert. denied, 114 S.Ct. 1865 (1994). Mere knowing presence is insufficient to sustain a conviction for conspiracy. *United States v. Chavez*, 947 F.2d 742, 745 (5th Cir.1991).

There was simply no evidence to show that Byron Jones was involved in a drug conspiracy with other members of ROD. There was no absolutely no evidence that Byron Jones was involved in a drug conspiracy. There was no evidence that he sold drugs, other than a one-off crack sale. There was no evidence that he distributed drugs to anyone, purchased drugs, collected drug money, or traveled for the purpose of the conspiracy. While, mere presence or association alone are not sufficient to support a conspiracy conviction, there was no evidence that Byron Jones was even present on Mandeville and Derbigny, other than the one time, while other members of ROD were selling drugs. *See United States v. Brito,* 136 F.3d 397, 409 (5th Cir.1998).

In *Holloway*, the defendant was charged as a minor participant in a drug-distribution conspiracy based on evidence that he sold crack in an area "known for its high volume of crack cocaine trafficking." *United States v. Holloway*, 377 Fed.Appx. 383, 387 (5th Cir.2010). Because there was no evidence that Holloway pooled his money with other co-conspirators, that he stashed his drugs close to other dealers' stashes, that he was related to other sellers, that any people who sold him crack knew he would resell it, and, in addition to that lack of testimony, five of the government's

eleven witnesses testified they did not know of Holloway (or did not mention him at all), this Court reversed. See id. at 385–86. *United States v. Preston*, 659 Fed.Appx. 169, 173 (5th Cir.2016), *cert. denied,* 137 S.Ct. 677 (2017), and *cert. denied sub nom. Allen v. United States,* 137 S.Ct. 677 (2017). Though some witnesses testified that Holloway and other dealers took turns and that Holloway sometimes bought crack from them, this Court reversed. Id. at 388.

While some of the members of ROD testified that they knew Byron Jones because he "was ROD" and they grew up with them, there was, as in *Holloway*, no evidence that Byron Jones pooled his money with other co-conspirators, that he even had a stash of drugs, let alone stashed his drugs close to other dealers' stashes and most significantly, Perry Hall, the witness who testified that there were 17 members of ROD who took over his house, testified that he had never seen Byron Jones. Byron Jones' conviction for the drug conspiracy charged in Count 2 should be vacated.

c. *The evidence produced at trial was legally insufficient to support murder in aid of racketeering. (Count Five)*

The evidence did not support Byron Jones' conviction for the February 24, 2010 murder of Travis Arnold for the purpose of gaining entrance to and maintaining and increasing position in ROD, an enterprise engaged in racketeering activity, in violation of La.R.S. 14:30.l(A)(l) and 24; all in violation of 18 U.S.C. §§ 1959(a)(l) and 2.

18 U.S.C. § 1959(a):provides that "[w]hoever ... for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity ... murders ... any individual in violation of the laws of any State

or the United States ... shall be punished...." There are four elements to a conviction under 18 U.S.C. § 1959(a):

> (1) that [a] criminal organization exists; (2) that the organization is a racketeering enterprise; (3) that the defendant committed a violent crime, in this case intentional second degree murder pursuant to La.R.S. 14:30.1 and 24; and (4) that the defendant acted for the purpose of promoting his position in a racketeering enterprise.

There was insufficient evidence to establish, based on the failure to properly instruct the jury detailed below, that the jury properly found that Byron Jones committed the intentional murder of Travis Arnold. The district court instructed the jury as to principal liability based solely on La.R.S. 14:24, which does not explicitly state, although Louisiana law clearly requires, that to be found guilty of principal liability to intentional second degree murder, a principal must possess the same intent as the shooter, that is the specific intent to kill or inflict great bodily harm. The district court rejected defense counsel's proposed instructions which would have properly informed the jury that to find Byron Jones guilty as a principal to the murder of Travis Arnold, it is not sufficient for them to find that he merely aided and abetted, as he had pled to in state court. Byron Jones' conviction on Count 5 cannot stand for this reason.

Furthermore, there was insufficient evidence produced at trial that, assuming arguendo that Byron Jones committed the intentional murder of Travis Arnold as a principal, that Travis Arnold's murder was committed to promote Jones' position in a racketeering enterprise. There was no evidence for any motive to kill Travis Arnold and therefore, it is just as plausible that the murder of Travis Arnold was wholly

unrelated to Ride Or Die and/or its alleged drug and violent crime conspiracies. There was simply no evidence that this admittedly violent act was committed "as an integral aspect of membership" in ROD. *United States v. Wilson*, 116 F.3d 1066, 1078 (5th Cir.1997) (quoting *United States v. Concepcion*, 983 F.2d 369, 381 (2d Cir.1992)), overruled on other grounds by United States v. Brown, 161 F.3d 256, 257 n. 1 (5th Cir.1998).

d. The evidence at trial was legally insufficient to convict Byron Jones of Assault with a Dangerous Weapon in Aid of Racketeering (Count Seven)

The evidence produced at trial was insufficient to support Byron Jones' conviction for committing assault with a dangerous weapon upon Isaac Rowel, in violation of the laws of the State of Louisiana, La.R.S. 14:37 and 24, all in violation of 18 U.S.C. §§ 1959(a)(3) and 2.

As described above, the judge failed to instruct the jury on the proper mental state required under Louisiana law to be found guilty of principal liability, as the statute La.R.S. 14:24 does not explicitly state that specific intent is required. Under Louisiana law, only those persons who knowingly participate in the planning or execution of the crime are principals. State v. Pierre, 631 So.2d 427 (La.1994). An individual may only be convicted as a principal for those crimes for which he personally has the requisite mental state. *State v. Lewis*, 46,513 (La.App.2d Cir.9/28/11), 74 So.3d 254, writ denied, 2011–2317 (La.3/9/12), 84 So.3d 551. Because the district court failed to instruct the jury as to the proper law of principals under Louisiana law, Byron Jones' conviction on Count 7 must fail.

Furthermore, there was insufficient evidence produced at trial that, assuming arguendo that Byron Jones committed the assault of Isaac Rowel as a principal, that the assault was committed to promote Jones' position in a racketeering enterprise. There was no evidence for any motive to attack Isaac Rowel and therefore, it is just as plausible that the shooting was wholly unrelated to Ride Or Die and/or its alleged drug and violent crime conspiracies. There was simply no evidence that this admittedly violent act was committed "as an integral aspect of membership" in ROD. *United States v. Wilson,* 116 F.3d 1066, 1078 (5th Cir.1997) (quoting *United States v. Concepcion*, 983 F.2d 369, 381 (2d Cir.1992)), overruled on other grounds by *United States v. Brown*, 161 F.3d 256, 257 n. 1 (5th Cir.1998).

II. THE COURT SHOULD GRANT THE WRIT BECAUSE THE FIFTH CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION WHEN IT ALLOWED THE GOVERNMENT TO INTRODUCE EVIDENCE OF "WITNESS INTIMIDATION" WHICH OCCURRED MID-TRIAL UNDER CIRCUMSTANCES THEY WERE SOLELY POSITIONED TO PREVENT.

Extrinsic evidence is admissible if it is relevant to an issue other than the defendant's character and its probative value is not outweighed by its undue prejudice. *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir.1978), cert. denied, 440 U.S. 920 (1979). Threat evidence is relevant where probative of guilt in the offenses charged. *United States v. Rocha,* 916 F.2d 219 (5th Cir.1990), *cert. denied,* 500 U.S. 934 (1991).

In *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir.1978), cert. denied, 440 U.S. 920, 99 S.Ct. 1244, 59 L.Ed.2d 472 (1979), the Fifth Circuit enunciated a two-step analysis, encompassing the substance of both Rule 404(b) and Rule 403, for

determining the admissibility of extrinsic evidence: First, it must be determined that the extrinsic offense evidence is relevant to an issue other than the defendant's character. Second, the evidence must possess probative value that is not substantially outweighed by its undue prejudice and must meet the other requirements of Rule 403. *United States v. Rocha*, 916 F.2d 219, 240–41 (5th Cir.1990).

In spite of the government's argument "it is no excuse that the holding cell placement within the small confines of the United States Marshal's Office provided these defendants with an opportunity to make the threats…," during the alleged threats by the defendants, the government was solely in control of both the defendants and the cooperating witnesses in this case. The district court properly pointedly questioned the government and U.S. Marshal's Service as to the reason for allowing the defendants and cooperating witnesses to be housed in such close proximity to each other as to be able to communicate. Shortly after the alleged incident, the defendants were moved to a different floor.

The government's manipulation of the location of the defendants in close proximity to the government's cooperating witnesses caused a foreseeable and highly avoidable event to occur which unduly prejudiced the defendants. Under these circumstances, the district court should have denied the government's Motion in Limine to Admit Evidence of Defendant's Attempt to Intimidate Witnesses and Influence Trial Testimony.

III. THE COURT SHOULD GRANT THE WRIT BECAUSE THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT ALLOWED THE GOVERNMENT TO INTRODUCE RECORDED JAIL CALLS THROUGH A NON-PARTY TO THE CALL.

At trial, the district court erroneously allowed the government to introduce during its final witness Special Agent Jennifer Doreck, over defense objection, a telephone call from Orleans Parish Prison purporting to contain a conversation between Deloyd Jones, who was identified by the cooperating witnesses, and a voice the cooperating witnesses could not identify, which Agent Doreck testified belonged to Byron Jones.

The undated phone call, entered as Government Exhibits 134a and b, in which two people, who are never identified by name, have a conversation in which it is relayed that "Travis" is incarcerated at Orleans Parish Prison with Deloyd, that he "would have been shanked up" if he was on the tier with Deloyd, that "Travis" had been in Central Lockup with Deloyd and Travis was "spookin'," and that Deloyd got ROD tattooed on his face. The voice attributed by Agent Doreck to Byron Jones explains to the caller that he is "playin' it smart, I'm playin' the game how it go, ya heard me. They don't know when I'm comin' through. They don't know where I'm at. I don't be, you know, you know it, I be inside sometimes, but I be – I be – I don't be inside all day and sh*t. I be, you know, I be gone somewhere or somethin' though. I was drive – be drivin' my momma car sometimes."

The call was the only evidence in support of the government's allegation that: "[b]eginning on or about May 16, 2009, and continuing through May 22, 2009, defendant DELOYD JONES, a/k/a "Puggy," completed multiple telephone calls from

the Orleans Parish Prison to defendant BYRON JONES, a/k/a "Big Baby," and Andrealie Lewis, a/k/a "Noot," and discussed the criminal activity of the enterprise" and that "[b]eginning on or about March 24, 2010, and continuing through April 1, 2010, defendants DELOYD JONES, a/k/a "Puggy," and BYRON JONES, a/k/a/ "Big Baby," along with Romalis Parker, a/k/a "Ro Ro," completed multiple telephone calls from the Orleans Parish Prison to known individuals and discussed the criminal activity of the enterprise."

Rule 901(b)(5) of the Federal Rules of Evidence indicates that a voice may be properly identified "by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." The government must additionally lay a foundation of reliability and accuracy when introducing a sound recording, however. *United States v. Cuesta*, 597 F.2d 903, 914 (5th Cir.1979).

There was insufficient evidence to establish that Special Agent Doreck was able to adequately lay a foundation to identify Byron Jones' voice on the recording, particularly here where the cooperating witnesses were unable to identify Byron Jones' voice. The introduction of the phone call was unreliable and the court's ruling allowing it to be played constituted an abuse of discretion.

IV. THE COURT SHOULD GRANT THE WRIT BECAUSE THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO GIVE REQUESTED JURY INSTRUCTIONS AS PROPERLY REQUESTED.

The district court abused its discretion when it refused to give the jury requested instructions on "accessory after the fact" or "parties to a crime" as specifically requested by defense counsel. Defense counsel at trial timely and

repeatedly moved for the inclusion of jury instructions as to La.R.S. 14:25, the law defining accessory after the fact.[1]

On August 3, 2015, the Government submitted its proposed jury instructions, with two objections by defense counsel noted at footnotes 11 and 13. Rec Doc. 443. Counsel on behalf of Byron Jones specifically requested that in addition to the legal definition of "principal liability," that the Court instruct the jurors as to "parties to a crime." [2] Specifically, defense counsel requested that the Court instruct that jury that under Louisiana law, while not reflected in La.R.S. 14:24, the law of principals to intentional second degree murder requires specific intent:

> All persons "concerned in the commission of a crime" are principals, La.R.S. 14:24, but this rule has important qualifications. Only those persons who knowingly participate in the planning or execution of a crime are principals. State v. Knowles, 392 So.2d 651 (La.1980). Mere presence at the scene is therefore not enough to "concern" an individual in the crime. State v. Schwander, 345 So.2d 1173 (La.1977). Moreover, "an individual may only be convicted as a principal for those crimes for which he personally has the requisite mental state." State v. Holmes, 388 So.2d 722, 726 (La.1980). In this case, the state charged defendant with a specific intent homicide under the provisions of La.R.S. 14:30.1(1). The state therefore had to show more than the defendant's direct or indirect involvement with the rape of the victim in the abandoned house shortly before the murder. The state had to show that the defendant specifically intended Contrell Alexander's death. State v. Pierre, 631 So.2d 427, 428 (La.1994)

The Court instructed the jury that a "principal" as defined by La.R.S. 14:24 is "any person concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the

[1] Rec. Doc. 458.
[2] ROA. 3667.

crime."3 The Louisiana statute does not state that the principal must share the mental state of the perpetrator, ie. specific intent to kill or inflict great bodily harm.

On February 9, 2011, Byron Jones pled guilty in Orleans Parish Criminal District Court to accessory after the fact to the second-degree murder of Travis Arnold and was sentenced to five years in prison. The government argued at trial that Byron Jones was a principal to the second-degree intentional murder of Travis Arnold, which was committed by Sidney Patterson.

This Court typically reviews a failure to give a requested jury instruction for an abuse of discretion. However, "when a jury instruction hinges on a question of statutory construction, [this Court's] review is de novo." *United States v. Wright,* 634 F.3d 770 (5th Cir.2011); *See* United States v. Harris, 740 F.3d 956, 964 (5th Cir.2014) (de novo review appropriate where the objection to the jury instruction hinges on a question of statutory interpretation).

In its ruling denying Byron Jones' Motion for New Trial, the district court found:

> Count 5 charged Byron with the murder of Travis Arnold, in violation Title 14, Louisiana Revised Statutes, Sections 30.1(A)(1) and 24; all in violation of 18 U.S.C. §§ 1959(a)(1) and 2.133 Count 7 charged Byron with assault with a dangerous weapon, in violation of Title 14, Louisiana Revised Statutes, Sections 37 and 24; all in violation of 18 U.S.C. §§ 1959(a)(3) and 2.134 Unlike Counts 6 and 8, convictions on Counts 5 and 7 may have been based on a finding that Byron committed the charged crimes in violation of Louisiana law.135 It is possible that Byron was convicted on Counts 5 and 7 because the jury concluded that, under Louisiana law, Byron was a "principal" to the Arnold murder and Rowel shooting. Therefore, whether the jury misunderstood or misinterpreted Byron's state-court guilty plea to being an accessory after the fact under Louisiana law in deciding whether Byron was a "principal" to

[3] ROA. 2915.

> those crimes may have affected his substantial rights if it affected the outcome of the trial court proceedings. It is in this context that the Court must consider whether its decision to not give the instruction warrants a new trial. United States v. Byron Jones, CR 13-205, 2016 WL 1383656, at *10 (E.D. La. Apr. 7, 2016)

On August 21, 2015, the government filed Proposed Jury Instructions noting that the previous "disagreement" about whether to include a "parties to a crime" instruction "has been resolved and the parties agree that the jury should be given both instructions."[4] The proposed agreed-upon instruction was included on page 62. The "Final Jury Instructions" promulgated by the district court did not include the parties to a crime instruction.[5]

In its Response in Opposition to Byron Jones' Motion for Post-Verdict Judgment of Acquittal, the government conceded "that Mr. Jones' proposed accessory after the fact instruction was a correct statement of Louisiana law and was not covered by the Court's instructions to the jury."[6]

Counsel for Byron Jones re-raised the issue in his Motion for New Trial. With respect to Counts 5 & 7, the district court found that its failure to give the requested "accessory after the fact" instruction was indeed error.[7] However, the court went on to find that the error was harmless because, it found, the "attorneys in this case repeatedly explained to the jury the distinction between Byron's state-court, accessory after the fact guilty plea and the fact that Byron was changed with being a

[4] Rec. Doc. 514.
[5] ROA.4088.
[6] Rec.Doc. 642 at p. 9.
[7] Rec. Doc. 680 at 25.

principal under Louisiana law in the federal crimes for which he was on trial." Id. The district court cited to different occasions in which the attorneys informed the jury that "accessory after the fact" was "a horse of a different color" from being charged as a principal. Rec. Doc. 680 at 26.

The fact that the attorneys may have argued that Byron Jones' conviction for accessory after the fact to Travis Arnold's murder was not the same as a what was required in the federal case does not, however, cure the prejudice caused by failing to properly instruct the jurors on the required mental state required to be a principal to second degree murder under Louisiana law.

Furthermore, to compound the prejudice, the district court repeatedly informed the jury that what the lawyers told them was argument, and that only she could instruct them as to the law. In fact, during one such instance, where defense counsel for defendant Deloyd Jones gave a statement of law to which the court disagreed, the district court gave a "curative" instruction, reminding the jury "Ladies and gentlemen of the jury, before we proceed, I wanted to mention one thing to you… I just want to remind you that I will instruct you on the law at the conclusion of the closing arguments, and that you are to apply the law as given to you by me." [8]

"As a general proposition, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor." *Mathews v. United States,* 485 U.S. 58, 63, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988). The Fifth Circuit Court of Appeal reviews a refusal to provide a requested

[8] ROA. 2829.

jury instruction for abuse of discretion. United States v. Asibor, 109 F.3d 1023, 1034 (5th Cir.), cert. denied, 522 U.S. 1034, 118 S.Ct. 638, 139 L.Ed.2d 617 (1997). The Court will reverse only if the requested jury instruction: (1) was a substantially correct statement of the law; (2) was not substantially covered in the charge as a whole; and (3) concerned an important point in the trial, the omission of which seriously impaired the defendant's ability to present an effective defense. Id. United States v. Perez-Valdez, 182 F.3d 331, 332 (5th Cir.1999).

As evidence of prejudice, the jury sent in multiple notes evidencing its lack of understanding of the required mental state and thereafter acquitted Byron Jones of the murder of Travis Arnold included as a special finding to Count 1 of the indictment.

Under the circumstances, the district court's failure to give the requested instruction constituted reversible error. The instruction requested by defense counsel was a correct statement of the law, was not covered by the jury charge, concerned an important part of the trial, namely the requisite mental state required for guilt to murder under Louisiana law, and it impaired a substantial right of the defendant. This Court should grant relief on this basis.

CONCLUSION

Under the circumstances of this case, where Mr. Jones has shown that his fundamental constitutional rights were violated at trial and the Fifth Circuit unreasonably affirmed his conviction and sentence in an unpublished, per curiam opinion, justify this Court's intervention under the circumstances. Mr. Jones

respectfully submits that this Court should grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 20th day of November, 2020.

Respectfully Submitted,

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