No. 20-7500

ORIGINAL

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER NATHANIEL **BROWN**,

Petitioner,

vs.

STATE OF **FLORIDA**,

Respondent.

On Petition for a Writ of Certiorari to
the First District Court of Appeal, Florida
Case No.: 1D18-5205

PETITION FOR WRIT OF CERTIORARI

Christopher N. Brown, DC# 890988
Graceville Correctional Facility
5168 Ezell Rd.
Graceville, Florida 32440-2402
Tel.: (850) 263-5500

QUESTION

Does Florida state courts deny defendants their Due Process Rights when the courts exclude extrinsic evidence which would corroborate defendant's knowledge of the victim's violent past and supports defendant's claim that he acted in self-defense?

LIST OF PARTIES

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

RELATED CASES

Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973).

District of Columbia v. Heller, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

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IN THE

SUPREME COURT OF THE UNITED STATES

Petition for Writ of Certiorari

Christopher N. Brown, an inmate currently incarcerated at Graceville Correctional Facility in Graceville, Florida acting *pro se* respectfully petitions this Court for a writ of certiorari to review the judgment of the First District Court of Appeal, Florida, being Petitioner's court of last resort which conflict with the decision of other states courts of last resort, of other United States courts of appeals and of the United States Supreme Court.

Opinions Below

For cases from State Courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported as the First District Court of Appeal, Florida and is published (cited as: 2020 Fla. App. LEXIS 9640; 45 Fla. L. Weekly D 1608)(July 6, 2020) as a *per curiam* affirmed with written opinion on July 6, 2020, rehearing and rehearing *en banc* was denied on August 13, 2020 (Appendix: B). Petitioner filed notice of discretionary review to the Florida Supreme Court where the court denied on October 5, 2020 (Appendix: C).

Jurisdiction

Mr. Brown's motion for rehearing and rehearing en banc in the First District Court of Appeal was denied on August 13, 2020. (Appendix: B). Petitioner filed notice of discretionary review to the Florida Supreme Court where the court denied on October 5, 2020 (Appendix: C). Mr. Brown invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within one-hundred-fifty (150) days of Florida's Supreme Court's denial of discretionary review (Per this Court's Order dated: Thursday, October 5, 2020).

Constitutional and Statutory Provisions Involved

United States Constitution, Second and Fourteenth Amendments: This Court holds that the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right of self-defense extends that right as against the states.

The Second Amendment provides that for immediate self-defense and shall not be infringed. This Court in District of Columbia v. Heller, 554 U.S. 570, 630, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) emphasized that "self-defense" is "the central component of the [Second Amendment] right itself." Two years later, in McDonald v. City of Chicago, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), this Court held that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller* to the states. *Id.* at 3026.

This Court also outlined the Due Process Clause of the Fourteenth Amendment regarding the right of the accused to present testimony of his self-defense claim. See, Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973).

Statement of the Case and Facts

Procedural Posture

Petitioner, proceeded to jury trial for the murder of Sharad Dues during a confrontation outside a convenience store, Brown testified that he shot Dues in self-defense. Brown believed he was in imminent danger of Dues using deadly force because he knew Dues had committed a murder and armed robbery. Brown was convicted of second-degree murder and sentenced to life without parole.

Brown attempted to introduce a certified judgment and sentence reflecting Dues' murder and armed robbery convictions. The state circuit court excluded the documentation because "no evidence showed that Brown knew about the certified judgment and sentence." Brown v. State, 2020 WL 3637601 (Fla. 1st DCA July 6, 2020), at *2. Florida's First District Court of Appeal affirmed Brown's murder conviction in reliance on State v. Smith, 573 So.2d 306 (Fla. 1990), in which the Florida Supreme Court ruled that the trial court erred in excluding corroborative evidence bearing on self-defense. The district court focused not on this holding but instead on the admonition in Smith that "this type of evidence should 'be admitted cautiously in light of the need to limit

evidence of specific acts because, *inter alia*, a jury may tend to give the evidence too much weight, or it may sidetrack the jury's focus.' " Brown v. State, 2020 WL 3637601, at *2 (citing *Smith*, 573 So.2d at 318). The district court continued:

> [T]he trial court excluded the certified judgment and sentence from evidence, finding it was not relevant to Brown's state of mind.
>
> We find no abuse of discretion by the trial court in excluding the certified judgment and sentence, particularly given the Florida Supreme Court's admonition [in *Smith*] that trial courts are exercise caution when admitting corroborative evidence of specific acts. *See id.*

2020 WL 3637601, at *2.

Florida's First District Court of Appeal denied Brown's motion for rehearing and rehearing *en banc*. He then sought discretionary review to the Florida Supreme Court based on misapplication of Smith and express and direct conflict with a Florida Fourth District Court of Appeal decision. Florida's Supreme Court denied Brown's request for discretionary review.

Overview

In rejecting the claim that the trial court erred in excluding a certified "judgment and sentence" corroborating Brown's testimony why he feared the imminent use of deadly force, Florida First District Court

of Appeal misapplied State v. Smith, 573 So.2d 306 (Fla. 1990), and created expressed conflict with the holding in Farrell v. State, 273 So.3d 43 (Fla. 4th DCA 2019). Florida's First District Court of Appeal misapplied Smith by relying on its general, advisory language rather than its specific holding, which dictated a different result. The Florida Supreme Court concluded in Smith the trial court erred by completely barring defense witnesses from corroborating three specific violent acts committed by the victim and known by the defendant. In Farrell Florida's Fourth District Court of Appeal concluded that the trial court erred in excluding testimony by the defendant and a defense witness that the alleged victim had beaten up the witness. Florida's Fourth District Court of Appeal held that the witness's account was "admissible and relevant to corroborate the defendant's testimony."

Florida's First District Court of Appeal approval of the trial court's exclusion of a certified "judgment and sentence" corroborating Brown's testimony created express and direct conflict with Smith and Farrell. The Florida Supreme Court denied Brown's request for discretionary review to address the misapplication of Smith, resolving the conflict with the holding in Farrell, and resolver uncertainty in Florida's courts on the

admissibility of evidence corroborating a defendant on the issue of self-defense.

Reasons for Granting the Writ

It appears Florida state courts denies defendants of the Due Process Clause by the exclusion of extrinsic evidence which would corroborate defendant's knowledge of the victim's violent past and supports defendant's claim that he acted in self-defense.

Here, it is axiomatic that self-defense was Brown's sole defense. This case involves the exclusion of evidence corroborating testimony by a murder defendant who asserts justifiable use of deadly force defense that the person he killed had a criminally violent past. Petitioner Brown testified that he believed Sharad Dues was about to shoot him when he fired the single shot that took Dues; life. Brown also testified that he knew Dues had participated in a murder and armed robbery[1]. Defense attempted to introduce a certified copy of a "judgment and sentence" documenting Dues' murder and robbery convictions. The trial court excluded the extrinsic evidence of Brown's knowledge on grounds that no evidence showed Brown was aware of the "judgment and sentence." Florida's First District Court of Appeal affirmed in reliance on language on State v. Smith, 573 So.2d 306 (Fla. 1990), advising caution in

[1] Prior to Brown testifying to the jury the trial court held a proffer where the court restricted Brown from testifying as to knowing that Dues had "done time" for murder and armed robbery. Instead, Brown could testify that he knew Dues' had participated in a murder and armed robbery.

admitting such evidence " 'because, *inter alia*, a jury may tend to give the evidence too much weight, or it may sidetrack the jury's focus.'"

The defense proffered Brown's testimony that he knew Dues from the neighborhood and school. He was aware that Dues had a reputation for violence, had done time for murder and armed robbery, sold drugs, and had beaten up both Jaquay Ealey, a witness to the shooting in this case, and a previous girlfriend. The trial court permitted Brown to testify before the jury on Dues' reputation, his violence against women, and his participation in a murder and armed robbery. However, the court excluded the "judgment and sentence" for murder and armed robbery, and instructed Brown not to testify that Dues had "done time" for those crimes. Defense counsel asserted that the extrinsic evidence of Dues' murder and armed robbery convictions should be admitted to corroborate Brown's testimony. Brown complied with these instructions in his jury testimony.

"The right to self-defense [was] the first law of nature," firmly rooted in the desire to maintain the "King's peace."[2] Dist. of Columbia v.

[2] In medieval England, the King's peace was "[a] royal subject's right to be protected from crime (to 'have peace') in certain areas subject to the king's immediate control, such as the king's palace or highway." *King's Peace*, *Black's Law Dictionary* 1041 (11th ed. 2019). "The weight of modern authority, in [the United States Supreme Court's] judgment, establishes the doctrine that when a person, being

Heller, 554 U.S. 570, 606, 128 S.Ct. 2783, 2805, 171 L.Ed.2d 637 (2008). Hence, under the common law, "[j]ustifiable homicide was faultless." Darrell A. H. Miller, *Self-Defense, Defense of Others, and the State*, 80 Law & Contemp. Probs. 85, 88 (2017). Nonetheless, "in most governments it has been the study of rulers to confine the right [of self-defense] within the narrowest limits possible." Heller, 554 U.S. at 606, 128 S.Ct. at 2805.

Florida's trial court ruling renders Defendants' trials fundamentally unfair so as to result in violation of Defendants' due process rights. Petitioner contends that he was deprived of his right to raise a meaningful defense when the trial court improperly excluded relevant evidence about the victim's reputation for violence that would have supported Petitioner's credibility as to his testimony. Petitioner understands that an accused in a criminal case does not have an unfettered right to offer evidence that is incompetent, privileged, or otherwise inadmissible under the standard rules of evidence. Montana v. Egelhoff, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996). This

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without fault, and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justifiable." Beard v. United States, 158 U.S. 550, 562, 15 S.Ct. 962, 966, 39 L.Ed. 1086 (1895).

Court indicated its "traditional reluctance to impose constitutional constraints on ordinary evidentiary rulings by state trial courts." Crane v. Kentucky, 476 U.S. 683, 689, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986). The Court gives trial court judges "wide latitude" to exclude evidence that is repetitive, marginally relevant, or that poses a risk of harassment, prejudice, or confusion of the issues. *Id.* (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)). Rules that exclude evidence from criminal trials do not violate the right to present a defense unless they are " 'arbitrary' or 'disproportionate to the purposes they are designed to serve' " as in Petitioner's case. United States v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998)(quoting *Rock v. Arkansas*, 483 U.S. 44, 56, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)).

According to this Court the due process right of a defendant in a criminal trial "is, in essence, the right to a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973). "The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." *Id.* Indeed, the right of an accused to present witnesses in his own defense

is one of the most fundamental rights. *Id.* at 302. Thus, there is no question that Brown was prejudiced by the trial court's denial of his testimony that he had first-hand knowledge that the victim had done prison time for his involvement in an armed robbery and murder, prompting Brown to act in self-defense.

The Far Reaching Effect of Petitioner's State Court Decision

Florida is just one of many states that recognizes "Stand Your Ground Law" which allows for using or threatening to use deadly force when a defendant reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. State statutes created two statutory presumptions for when a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another. Such as; a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

Fla. Stat. § 776.031.

> (1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent

that the person reasonably believes that such conduct is necessary to prevent or terminate the others trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

(2) A person is justified in using or threatening to use deadly force only if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

All states and United States territories have their own vision of "Stand Your Ground Law" or "Castle Doctrine," as follows:

Legend: S-Y-G-S = Stand-your-ground statute
S-Y-G-P = Stand-your-ground precedent
D-T-R-H = Duty-to-retreat, but not in your home
D-T-R-H-WP = Duty-to-retreat, but in your home or workplace
D-T-R-H-V-WP = Duty-to-retreat, but not in your home or vehicle or workplace
I-P = Intermediate position
N-S-R = No settled rule

1. Alabama: S-Y-G-S Ala. Code 13A-3-23

2. Alaska: S-Y-G-S Ak. Stat. § 11.81.335

3. Arizona: S-Y-G-S Ariz. Stat. § 13-411

4. California: S-Y-G-P

5. Colorado: S-Y-G-P Colo. Stat. § 18-1-704

6. Commonwealth of the Northern Mariana Islands: S-Y-G-P

7. Connecticut: D-T-R-H-WP

8. Delaware: D-T-R-H-WP

9. District of Colombia: I-P

10. Florida: S-Y-G-S Fla. Stat. § 776.012

11. Georgia: S-Y-G-S Ga. Code § 16-3-23.1

12. Guam: D-T-R-H-V-WP

13. Hawaii: D-T-R-H-WP

14. Idaho: S-Y-G-P Idaho Stat. § 19-202A

15. Illinois: S-Y-G-P

16. Indiana: S-Y-G-S Ind. Code § 35-41-3-2

17. Iowa: S-Y-G-S

18. Johnston Atoll and Sand Island: N-S-R

19. Kansas: S-Y-G-S Kans. Stat. § 21-5230

20. Kentucky: S-Y-G-S Ky. Code § 503.050

21. Louisiana: S-Y-G-S La. Stat. 14, § 20

22. Maine: D-T-R-H

23. Maryland: D-T-R-H

24. Massachusetts: D-T-R-H

25. Michigan: S-Y-G-S Mich. Laws. § 780.972

26. Minnesota: D-T-R-H

27. Mississippi: S-Y-G-S Miss. Code § 97-3-15

28. Missouri: S-Y-G-S Mo. Stat. § 563.031

29. Montana: S-Y-G-S Mont. Title § 45-3-110

30. Nebraska: D-T-R-H-WP

31. Nevada: D-T-R-H-WP Nev. Stat. § 200.120

32. New Hampshire: S-Y-G-S NH Code § 627:4

33. New Jersey: D-T-R-H

34. New Mexico: S-Y-G-P

35. New York: D-T-R-H

36. North Carolina: S-Y-G-S NC Stat. § 14-51.3

37. North Dakota: D-T-R-H-WP

38. Ohio: S-Y-G-S

39. Oklahoma: S-Y-G-S Okla. Stat. Title 21

40. Oregon: S-Y-G-P

41. Pennsylvania: S-Y-G-S PA Stat. § 505

42. Puerto Rico: S-Y-G-S

43. Rhode Inland: D-T-R-H-WP

44. American Samoa: N-S-R

45. South Carolina: S-Y-G-S SC Code § 16-11-440

46. South Dakota: S-Y-G-S S. Dak. Cod. Laws 22-18-4

47. Tennessee: S-Y-G-S Tenn. Code § 39-11-611

48. Texas: S-Y-G-S Tex. Code § 9.31

49. Utah: S-Y-G-S Utah Code § 76-2-402

50. Vermont: S-Y-G-P

51. Virginia: S-T-G-P

52. Virgin Islands: N-S-R

53. Washington: S-Y-G-P

54. West Virginia: S-Y-G-S W. Va. Code § 55-7-22

55. Wisconsin: D-T-R-H-WP Wis. Stat. § 939.48

56. Wyoming: S-Y-G-S

The importance of this argument is that it effects all states and U.S. territories and the lack of guidance from this Court to the lower state courts on this issue, or any conflicts on this issue in the lower district and

appellate courts leads to a denial of due process that could change the outcome of many trials.

Relevance of Evidence of Victims Violent Character

- Acts prior to and during the shooting

Brown testified to the jury that he knew Dues from the neighborhood and high school. Testifying within limits set by the trial court, Brown said Dues had a reputation for violence, was known to carry a gun, had participated in murder and armed robbery[3], had beaten up Brown's ex-girlfriend's daughter, Jaquay Ealey, and had been in violent confrontations with a previous girlfriend.

Brown treated Ealey like a stepdaughter because of the relationship he had with her mother. He testified that on the day of the shooting, Ealey came to his house upset. Brown learned Dues had beaten her up. He said he would take her home to her mother. En route, they stopped at the McDuff Food Store for beer. While parking, Brown heard pounding on his car and saw that it was being caused by Dues. Angry and yelling, Dues continued pounding. Brown removed his 9 millimeter

[3] The trial court allowed Brown to testify to the jury that Dues had participated in a murder and armed robbery but would not allow Brown to say that Dues had "done time" for the murder and armed robbery. Therefore, not allowing the "judgment and sentence" information into evidence.

handgun from the glove compartment and loaded it with a magazine from the center console. Brown racked his gun so Dues could see what he was doing. Undeterred, Dues walked around to the front of the car and threatened to kill Brown if he got out. Dues held a bag. Brown thought that, as in the past, Dues had a gun. Brown got out of the car, gun in hand. Face to face with Brown, Dues threatened to kill him. Brown told him to get away from the car and leave. Dues clutched the bag and came toward Brown, who pushed him away. Dues lifted the bag in an apparent effort to reach for a weapon. Brown fired once without aiming. Dues was still moving when Brown returned to his car and left. An unidentified man picked up the bag Dues had been holding, and eventually left with the bag, which was never recovered. All caught on surveillance video.

Dues suffered a fatal gunshot wound to the chest, severing his superior vena cava. The toxicology report showed alcohol in his blood at .04-.05 grams per 100 milliliters of blood. Dues' blood also contained cocaine metabolites. An expert pharmacologist testified that alcohol and cocaine can make a person more aggressive and less inhibited.

The violent character of the victim is often a relevant issue when the defendant claims that he killed in self-defense. Likewise, the victim's

specific conduct toward the defendant or other general acts of violence may be admissible to justify the killing. The admissibility of such evidence has been a frequent appellate problem in Florida. However, much of the difficulty can be avoided if defense counsel understands the distinction between character and reputation, remembering the purposes for the introduction of each type of evidence and lay a proper foundation for admissibility.

Reputation

Florida courts have defined reputation as evidence of character. It has been stated that the reputation of a person is the outward manifestation of his character as observed by those with whom he has come in contact. The essential element is the contact with others; without this they can have no knowledge upon which to base their reactions to the individual and his conduct reputation is how others react to him. Character has been defined as that which makes him act the way he does character is how the individual acts. Where self-defense is claimed, the pertinent aspect of the victim's personality is his character for violence.

The general rule is that the known character of the deceased, whether for peace or violence, is admissible for that demonstration by evidence of the deceased's general reputation in the community. This may be used to show either the defendant's reasonable belief or apprehension that he was in danger of death or great bodily harm from the victim, or that the victim was probably the aggressor because of his propensity for violence. However, where the defendant seeks only to prove that his actions were based on the deceased's reputation for violence, it is necessary that he first establish prior knowledge of such reputation.

Reputation evidence is given in the form of an opinion by the witness as to what is reported or understood to be the community's estimate of the victim's character. When a witness is questioned about the reputation of the victim, he is to tell what opinion is generally entertained by those persons acquainted with him. In testing the admissibility of his evidence, it is permissible to inquire into the rumors and reports of particular transactions on which the witness bases his conclusion of the victim's reputation. The question should be put to the witness in terms of whether or not he has heard of the particular report

or rumor and not whether he has knowledge of the event. The general rule is that specific acts of misconduct cannot be the basis for the opinion as to the victim's reputation. Before general reputation is admissible the witness must be competent to offer his opinion on the nature of the victim's reputation in the community. Their testimony had been based on having seen him at work and at service station and barbershop periodically, and these were held to be merely evidence of specific acts or conduct.

Whereas the character of the victim is relevant to the issue of the defendant having acted in self-defense, the opposite is generally not true. The victim's state of mind is generally irrelevant, except where relevant and necessary to rebut the defendant's claim of self-defense, or to prove the decedent committed suicide or suffered an accidental death.

Specific Acts

While isolated, individual acts of misconduct may not be the basis for opinion evidence, they may be admitted to show that the defendant had a reasonable belief or apprehension of danger to life or great bodily harm from the victim. Specific acts of violence by the victim have probative value where they reasonably and naturally contributed to

arousing genuine feelings by the defendant of imminent danger to life or great bodily harm at the time of the fatal act.

A foundation for the introduction of the specific acts is required. It has been stated that the necessary predicate for the admissibility of individual acts of the victim is some evidence of an act on his part which would reasonably suggest the need for self-defense. However, the foundation for the introduction of evidence of the dangerous character of the deceased may be laid by the testimony of the accused although it is not supported by other testimony. *See* Kilgore v. State, 271 So.2d 148, 153 (Fla. 2nd DCA 1973) and Smith v. State, 410 So.2d 579 (Fla. 4th DCA 1982)(error to tell jury to disregard testimony of this nature).

Since the specific acts go to the defendant's reasonable belief in the necessity to kill, they are only admissible if they are known to the defendant at the time of the altercation. If the specific acts are not known to the defendant, they are inadmissible on this ground. For example, evidence of prior specific violent acts of the victim have been held inadmissible for purposes of showing the victims general reputation as a violent, dangerous and quarrelsome person where they were unknown to the defendant.

Defense counsel should be aware that the defendant can testify to the specific acts if they have a relationship or connection to the defendant's apprehension of the victim. If they are too remote, or there are other intervening circumstances, they are considered to have no probative value. It is well settled that a defendant may not testify as to specific acts of the victim if they are extremely remote and insufficiently related to the defendant's claim of reasonable fear for his life at the time of the incident for which he is charged.

Petitioner argued to the state courts that when a defendant asserts self-defense and testifies he know about specific acts of violence by the alleged victim, extrinsic evidence corroborating that testimony is admissible. Smith v. State, 573 So.2d 306, 318 (Fla. 1990). In Smith, the defendant testified that the alleged victim told him about his involvement in three specific violent incidents. The court precluded Smith from presenting witnesses to the jury who would have corroborated that the specific acts of violence occurred. "The trial court erred by barring that evidence completely."

In several cases from other jurisdictions, trial courts erred in excluding extrinsic evidence (i.e., evidence not from the accused) to

corroborate testimony by defendants that they were aware their alleged victims had committed other acts of violence. United States v. James, 169 F.3d 1210, 1214 (9th Cir. 1999); Daniel v. State, 78 P.3d 890, 900-902 (Nev. 2003); State v. Daniels, 465 N.W.2d 633, 641-42 (Wisc. 1991). In James, the court erred in excluding court documents, a presentence report, and two police reports. In the Wisconsin Daniels case, exclusion of testimony by the victim and another witness verifying the victim's incidents of violence known to the defendant caused error. 465 N.W. 2d at 635, 641-42. The court explained:

> Evidence corroborating the defendant's self-serving testimony on the only issue in the case, the defendant's state of mind, would be highly per persuasive to the fact finder. The mere fact that the state does not contest the defendant's testimony about the victim does not obviate the defendant's need to bolster his own testimony with testimony of other witnesses, especially that of the victim himself. As McAllister [v. State, 246 N.W.2d 511 (1976)] makes clear, the defendant should not be limited merely to his own assertion but should be allowed to produce supporting evidence to prove the reality of the particular acts of which he claim a knowledge.

Id. at 640.

Petty v. State, 997 P.2d 800 (Nev. 2000), discussed in the Nevada Daniel opinion, is directly on point. The trial court in Perry erred in excluding a copy of the alleged victim's conviction for robbery in a case in

which the record showed that the defendant knew the alleged victim had been convicted of robberies. Id. at 803. The court held the robbery conviction admissible "for purposes of showing the reasonableness of the appellant's state of mind." Id. In the case, defense counsel sought admission of Dues' judgment of conviction for murder and armed robbery on the same rational:

> THE COURT: You propose to introduce it?
> MS. DIAZ: I do. I have the certified copies.
> THE COURT: On what basis?
> MS. DIAZ: On the basis that my client is raising a self-defense claim and that he was aware of the murder conviction. And this would show the jury that it wasn't - that it was substantiated that there was a murder conviction and that the victim in this case was a violent individual....
>
> (T.174, emphasis supplied)
>
> MS. DIAZ: ...[The judgment and sentence] supports that fact that [Brown] knew about this murder and armed robbery and that that's what Sharad Dues had been convicted of. I think that it –
> THE COURT: How does it support that he knew about it? Just because there's a J&S doesn't prove that Mr. Brown knew about it. And the State's not objecting. I am going to allow Mr. Brown to testify that he knew about the murder and the armed robbery. That's going to come in.
> MS. DIAZ: Judge, but there's a difference between saying, oh, I knew he was a convicted murderer and the jury knowing he was a convicted murderer. It's an actual fact. This man was a convicted murderer. It's not just that I'm coming up with this thing or he's making this up or whatever....

(T.418-19, emphasis supplied)

Several of these cases include discussion of trial court's discretion to limit extrinsic evidence of an alleged victim's violent acts to avoid unfair prejudice or confusion of issues. Smith, 573 So.2d at 318; Daniels, 465 N.W. 2d at 640. Here, Dues' judgment of conviction for murder and armed robbery would have been the sole extrinsic evidence Dues' lethal potential. Further, defense counsel offered to stipulate that Dues had been convicted of the offenses, which would have kept the actual "judgment and sentence" documentation from the jury. The state declined the stipulation. Finally, even though the court precluded mention of the prior conviction in opening statement, it could have later avoided reversible error by reconsidering its ruling and allowing admission of the extrinsic evidence, as in Jimenez v. State, 381 P.3d 628 (Nev. 2012).

The court's exclusion of Dues' convictions left the defense wholly without corroboration of Brown's testimony that he knew Dues had murdered another person. "A defendant should not be limited merely to his own assertion that he had knowledge of particular violent acts, but should be allowed to produce supporting evidence to prove the reality of

the particular acts of which he claims knowledge, thereby proving the reality of the particular acts of which he claims knowledge, thereby proving reasonableness of his knowledge and apprehension and the *96 credibility of his assertion." McAllister v. State, 246 N.W.2d 511, 514 (Wisc. 1976). The court erred further in permitting Brown to testify only that he knew that Dues had been involved in a murder and arm robbery (Excluding that Dues had been convicted and sentenced) for those crimes. See, Gov't of Virgin Islands v. Carino, 631 F.2d 226, 230 (3rd Cir. 1980)("[T]he evidence of [defendant's] knowledge of [alleged victim's] conviction was admissible ... to show fear or state of mind").

In a case that turned entirely on whether the jury believed that Brown reasonably perceived that he faced deadly force from Dues, and in light of the state's argument that Brown's testimony on his knowledge of Dues' capacity for violence constituted "character assassination," these errors contributed to the verdict, necessitating reversal of Brown's conviction and remand for a new trial.

Conclusion

All states and territories presently lacks the guidance from this Court when a trial court denies the Due Process Clause by excluding extrinsic evidence of defendant's knowledge of the victim's violent past and support defendant's claim that he acted in self-defense.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher N. Brown

Christopher N. Brown, DC# 890988
Petitioner, *pro se*
Graceville Correctional Facility
5168 Ezell Road
Graceville, Florida 32440-2402