

23-6532  
IN THE SUPREME COURT  
OF THE  
UNITED STATES

ORIGINAL

United States of America

Respondent

v

Zerak Brown  
Petitioner

Supreme Court, U.S.  
FILED

JAN - 8 2024

OFFICE OF THE CLERK

On Petition For Writ Of Certiorari To

United States Court of Appeals  
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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Zerak Brown

Zerak Brown - 16397-509  
United States Penitentiary Marion  
P.O. Box 1000  
Marion, Illinois  
62959

Questions Presented

1. Did the Framers intend that, in a criminal prosecution, a defendant is entitled assistance of counsel, under the 6th Amendment, for "all criminal prosecutions" until the judgement of conviction is final, including Certiorari to the United States Supreme Court?
2. Is it procedurally mandated for a Court to hear the criminal defendant's objections to the facts as stipulated by the government, when the government's version is unsupported by the record?
3. If an officer is acting under dual employment ("two hats") as both a State law enforcement officer (State Police), and a Federal law enforcement officer (ATF), at what point is the transfer of jurisdiction, when the officer is in the process of conducting official duties for the State (such as recovery of a victim's property) from State to Federal, and under what precedent should such a transfer occur?
4. Is it a 4th Amendment violation when Police breach the doorway of a private residence to seize an individual without probable cause, warrant or suspicion of criminal activity when the individual is a lawful resident of the premises and had no criminal history?

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List Of Parties

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

Related Cases

United States v Zerak Brown

Criminal Case No. 1:20-cr-00168 SNLJ

Appeal to the Eighth Circuit Court of Appeals

Appeal No. 22-1900

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OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix "A" to the petition and has been designated for publication, but is not yet reported or is unpublished.
2. The judgement of the United States District Court for the Eastern District of Missouri appears at Appendix "B" to the petition.
3. The Denial of Appointment of Counsel by the United States Court of Appeals for the Eighth Circuit appears at Appendix "C" to the petition.
4. The Denial of Appointment of Counsel by the United States Supreme Court appears at Appendix "D" to the petition.
5. The denial of Petition For Rehearing/En Banc to the Eighth Circuit Court of Appeals appears at Appendix "E" to the petition.

ADDITIONAL APPENDICES

Appendix "F": "Supplement 1: Interview of Ira Brown"

Appendix "G": "Affidavit of Zerak Brown"

Constitutional and Statutory Provisions Involved

The United States Constitution

Amendment 4

Amendment 5

Amendment 6

Amendment 14

United States Code Service (U.S.C.S.)

18 U.S.C.

§ 111(a)(1)

§ 111(b)

§ 924(c)(1)(A)

28 U.S.C.

§ 2255(f)(1)

§ 2244(d)(1)(A)

Federal Rules Of Criminal Procedure

Rule 44(a)

### Procedural History

On November 3, 2020 the U.S. Grand Jury in the Eastern District of Missouri returned a 4 count indictment charging Ira Brown, the petitioner's co-defendant and father, with 1 count for possessing a machine gun, and the petitioner was charged with the remaining 3 counts, two counts of assaulting an officer, and 1 count of using a firearm to further a crime of violence.

On November 2, 2021, the U.S. Grand Jury in the Eastern District of Missouri returned a superceding indictment, charging Ira Brown with Count 1. Count 2 alleges Zerak Brown, the petitioner, did forcibly assault, resist, oppose, impede, intimidate, and interfere with Jeffery Johnson, as he was employed as a task force officer with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) while Johnson was engaged in the performance of his official duties, in violation of 18 U.S.C. § 111(a)(1); Count 3 alleges Zerak Brown did forcibly assault, resist, oppose, impede, intimidate, and interfere with Christopher Wakefield, A. Shipley, and Roger Medley while they were assisting Johnson and while Johnson was engaged in the performance of his official duties, in violation of 18 U.S.C. § 111(a)(1) & (b); Count 4 alleges the Zerak Brown knowingly possessed a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) & (ii);

On November 15, 2021, a jury commenced and was concluded the following day on November 16, 2021. A Motion for Acquittal was filed on November 16, 2021 and denied. The Jury returned a verdict of guilt on all 3 counts on the same day.

On February 22, 2022 the petitioner filed a Motion for Reconsideration of the Court's denial of the Motion for Judgement

of Acquittal, but was denied on April 20, 2022.

On April 20, 2022 the petitioner was sentenced to 125 months, with 41 months for Counts 2 and 3, and 84 months for Count 4. This was to be served consecutive to Counts 3 and 4. The judgement was entered on the same date.

The petitioner filed Notice of Appeal on April 27, 2022. Oral Arguments were granted by the Eighth Circuit Court of Appeals on June 16, 2023, but the Appeal was denied on August 10, 2023.

Zerak Brown filed a Motion to Reconsider the Appellant Panel's Decision En Banc, and a Petition For Rehearing, with a supporting affidavit, and this was denied on October 17, 2023.

Note: Zerak Brown, the petitioner, did not receive a copy of District Court's opinion and denial. He did receive a copy of the judgement, this can be found at Appendix "B".

Reasons For Granting the Petition

Argument

The Sixth Amendment to the Constitution of the United States guarantees that an accused will not stand alone in Court without effective assistance of counsel through ALL stages of the criminal proceedings against him. See: United States v Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L Ed. 2d 1169 (1967); The right to counsel attaches once judicial proceedings have been initiated against him. See also: Edwards v United States, 321 U.S. 769, 64 S.Ct. 523, 88 L Ed. 1064 (1944); And: Fuller v Oregon, 417 U.S. 40, 94 S.Ct. 2116, 40 L Ed. 2d 642 (1974) "An indigent accused is entitled to free counsel 'when he needs it', that is, during every stage of criminal proceedings against him."

With the additional issues the petitioner raises, including questionable conduct by State Police and Federal Officers, Certiorari to the Supreme Court is a critical stage in the criminal process, no less crucial than the Appellate process, and the purpose of the Sixth Amendment is to insure that the accused will not suffer adverse judgement or lose the benefit of procedural protection because of his ignorance of law and criminal procedure.

United States v Rad-O-Lite of Philadelphia, Inc., 612 F.2d 740 (3rd Cir. 1979);

The 6th Amendment to the United States Constitution states:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; 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."

In the plain language reading this text, the following rights are guaranteed:

1. Speedy Trial.
2. Public Trial.
3. Impartial Jury.
4. District wherein the crime was committed.
5. Informed of the nature and cause of the accusation.
6. To be confronted with the witnesses against him.
7. Process for obtaining witnesses.
8. Assistance of counsel for defense.

Whether each of these taken individually, or if they are so intertwined in a state in which they cannot be untangled from each other, they each fall under the opening phrase "in all criminal prosecutions".

"All" (adv.) is defined as: "to the full or entire extent: wholly"; (As quoted in Merriam Webster's Dictionary, 2014, page 30);

It is imperative the Court be consistent in the interpretation of the finality of criminal prosecution. In the previous U.S. Supreme Court cases Linkletter v Walker, 85 S.Ct. 1731, 381 U.S. 618 (1965)(Footnote #5); Allen v Hardy, 106 S.Ct. 2078, 478 U.S. 255 (1986)(Footnote #1); and Teague v Lane, 109 S.Ct. 1060, 489 U.S. 288 (1989)(Footnote #3); they each state:

"By final we mean where the judgement of conviction was rendered, the availability of appeal exhausted, and the time for petition for certiorari had elapsed."

The United States Supreme Court has defined the finality of a judgement in Gonzales v Thaler, 132 S.Ct. 641 L. Ed. 2d 619, 565 U.S. 134:

"The Antiterrorism and Effective Death Penalty Act [AEDPA] of 1996's statute of limitations for federal prisoners seeking postconviction relief under 28 U.S.C.S. § 2255(f)(1) begins the 1-year statute of limitations from the date on which the judgement of conviction becomes final. The federal judgement becomes final when the United States Supreme Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or, if a petitioner does not seek certiorari, when the time for filing a certiorari expires. The argument that, if a petitioner declines to seek certiorari, the limitations period starts to run on the date the court of appeals issues its mandate, has been rejected." (Sotomayer J., joined by Roberts, Ch. J., and Kennedy, Thomas, Ginsburg, Breyer, Alito, and Kagan, JJ.);

"The direct review process for purposes of 28 U.S.C.S. § 2255(f)(1) either 'concludes' or 'expires,' depending on whether the petitioner pursues or forgoes direct appeal to the United States Supreme Court." (Sotomayer, J., joined by Roberts, Ch. J., and Kennedy, Thomas, Ginsburg, Breyer, Alito, and Kagan, JJ.);

"The text of 28 U.S.C.S. § 2244(d)(1)(A), which marks the finality or the expiration of the time for seeking such review, consists of two prongs. Each prong-the 'conclusion of direct review' and the 'expiration of the time seeking such review' relates to a distinct category of petitioners. For petitioners who pursue direct review all the way to the United States Supreme Court, the judgement becomes final at the 'conclusion of direct review'-when the Supreme Court affirms a conviction on the merits or denies a petition for certiorari. For all other petitioners, the judgement becomes final at the 'expiration of the time for seeking such review'-when the time for pursuing direct review in this Court, or in state court, expires. Where a petitioner did not appeal to the State's highest court, his judgement became final when his time for seeking review with the State's highest court expired." (Sotomayer, J., joined by Roberts, Ch.J., and Kennedy, Thomas, Ginsburg, Breyer, Alito, and Kagan, JJ.);

The 8th Circuit, in Smith v Bowersox, 159 F.3d. 345 (1998), agreed with this definition of finality by the Supreme Court.

See also: Fed. R. Crim. Proc. Rule 44(a):

Right to and Appointment of Counsel:

"A defendant who is unable to obtain counsel is entitled to counsel appointed to represent the defendant at every stage of the proceeding from the initial appearance through appeal, unless the defendant waives this right."

Once the petitioner's counsel withdrew from his criminal case, the petitioner never waived his right to counsel and filed motions with both the Eighth Circuit Court of Appeals, and the Supreme Court for Appointment of Counsel, as guaranteed under the Sixth Amendment. (See: Appendix "D" & "E"); He was denied by both.

This denial contradicts Circuit and Supreme Court precedent, where the finality of a defendant's criminal conviction is not at the end of the appellate process, but concludes after the Supreme Court affirms a conviction on the merits on direct review, or denies a petition for a writ of certiorari.

A defendant in a criminal prosecution is guaranteed assistance of counsel for every stage, and the question of where that process ends is readily defined in the very first phrase: "In all criminal prosecutions".

What did the framers intend the phrase: "In all criminal prosecutions" to mean? This Court needs to define the bright line of when a criminal prosecution actually ends.

In addition to violating the 6th Amendment, it further violates the petitioner's 5th Amendment rights and the Due Process Clause.

The District Court  
And The Appellate Court  
Have Based Their Decision  
On Erroneous Information

Both the District Court for the 8th Circuit, and the Appellate Court have based their decision and finding of guilt on erroneous information which was purposely misrepresented by the government, and used to bolster their position. The Petitioner corrected the record in his Petition For Rehearing to the Appellate Court, denied on October 17, 2023.

The narrative presented by the government, and accepted by the Court, omits certain facts and events which took place during the altercation which occurred between Zerak Brown and State law enforcement on the evening of October 23, 2020.

Factual inaccuracies in the record can affect the outcome of a case when those facts are omitted or purposely misrepresented, or both. Zerak Brown disputes that version of events presented by the government, which contradict the record. The government also adds subject matter in the form of evidence which never existed for the purpose of securing a conviction. (See: "Appellee's Brief", Ex. "A", pg. 12, ¶ 1, "[ ]silencers [] and other tactical gear" items were supposedly recovered from the duffel bag seized from the truck. Nowhere in discovery are items such as silencers mentioned.);

Inaccuracies, or an incomplete analysis of the record can be the basis for a remand. "[ ]inaccuracies, incomplete analysis, and unresolved conflicts of evidence can serve as a basis for a remand." Draper v Barnhart, 425 F.3d 1127 (8th Cir. App. 2005); The Supreme Court has agreed with this conclusion before. See: Clackamas

Gastroenterologoy Assocs., PC v Wells, 538 U.S. 440 S.Ct. 2003

(remanded due to inaccuracies in the record which would support a contrary conclusion); See also: McConnell v FEC, 540 U.S. 207; 124 S.Ct. 697 (2003) "The record strongly supports [a] contrary conclusion.";

The Eighth Circuit has also agreed with the Supreme Court, but the Court of Appeals ignored both Circuit precedent and the findings of the Supreme Court. See: Valle v Saul, 2019 U.S. Dist. LEXIS 143601 (E.D. Missouri, 2019); Reeder v Apfel, 214 F.3d. 984 (8th Cir. App. 2000); And: Atwell v Colvin, 2015 U.S. Dist. LEXIS 145569 (W.D. Ark. 2015);

When State Police Officer Johnson arrived at the Brown residence, he was accompanied by two VPD officers and one witness. Present were Officers Johnathon Bridges, Josh Callahan and Brenda Cone. Bridges and Callahan were both wearing standard black outfits with vests and hats, while Brenda Cone was wearing a dress and escorting Jasmine Theis. (See: "Affidavit of Zerak Brown"); The witness and all officers present were there for one purpose: to retrieve Jasmine Theis's belongings, they were there conducting State business, not Federal.

State Police Officer Johnson was not in uniform, nor did he announce himself as a federal officer with the Alcohol, Tobacco, and Firearm Agency(ATF). He was dressed casually, in khakis, and without a vest like the other officers present. Due to lack of a warrant, the Petitioner refused the officers entry into the residence. He was standing on the porch at this time. When Bridges contacted Ira Brown, the petitioner's father, on the phone, Zerak Brown had already stepped back inside the residence and was standing in the doorway, on the threshold of the house. This is verified by the police report

written by Officer Cone, and ignored by both the District Court and the Court of Appeals. (See: "Supplement 1, Interview of Ira Brown, pg. 6, Sec. 28; Appendix "F");

This is also verified by Zerak Brown's own personal account of the events, which until recently, have never been entered into the record. The Court of Appeals ignored this also, as well as Sergeant Johnson's own testimony at trial. "[Officer Bridges] actually pulled [Zerak Brown] out of the doorway[.]" (Trial Transcript, Vol. 1, pg. 119, ln. 10); and this is also contradicted by Johnson's initial police report, which entirely omits it.

Once Officer Bridges had contacted Ira Brown on a cell phone, he handed the phone to Zerak Brown, who was still standing in the threshold of his house. Bridges, misunderstanding a comment made by Ira Brown to his son ("I guess it's time for me to die"), grabbed the petitioner out of the residence and restrained him in a bearhug, tightening his grip until the petitioner was forced to break it before he lost consciousness. (Affidavit, pg. 4)(Appendix "G");

Once Zerak Brown broke out of the bear hug, and in fear for his life, he tried to run but was tackled by Bridges, who once again grappled with him on the ground. Contrary to the government's version of events, at no point was he grappling with Sergeant Johnson. There was no physical contact between Johnson and Zerak Brown except for when Johnson had placed his hand on the petitioner's arm while he was first standing on the porch and before he'd moved back into his house, and when Brown shoved Johnson out of his way when he ran behind the house. (Affidavit, pg. 3, 4);

Other than the belief that Ira Brown was "making threatening

statements", there has never been a proper, reasonable justification for why Officer Bridges violated the petitioner's Fourth Amendment Rights by yanking him out of his own home without a warrant. This action by State Police has never been properly addressed and makes no sense. This breach of the petitioner's home was without his consent, and was done while he was talking on the phone with his father.

Both the District Court and the Court of Appeals for the Eight Circuit have based their decisions on findings which are unsupported by the record. Instead, they have chosen to rely on "facts" presented by the government which remain in dispute and can be refuted by witness testimony, police reports and the petitioner's own account. All of which support each other, and are documented facts.

The District Court and Court of Appeals are mistaken in their interpretation of these events, and the difference in that interpretation can affect the entire outcome of the proceedings.

When Does a State Matter  
Become Federal When No Federal  
Statute is Involved?

It is not uncommon for law enforcement officers to act under dual employment, sometimes referred to as "wearing two hats". (See: Transcripts, pg. 18 , Vol. 2 ); This practice is often necessary between state and federal authorities, and makes sense when the two have a tendency to cross paths. The U.S. Constitution does not forbid federal and state authorities to wear two hats, it does forbid them to wear them at the same time. See: Mistretta v United States, 109 S.Ct. 647, 102 L Ed. 2d 714, 488 U.S. 361 (1989) "While the Constitution [] does not forbid judges to wear two hats, it merely forbids them to wear both hats at the same time." And: United States v Sioux Nation of Indians, 110 S.Ct. 2716, 65 L Ed. 2d. 844, 448 U.S. 371 (1980) "Congress can wear two hats, but it cannot wear them both at the same time.";

Common sense would apply this not only to our judges and Congressman, but also law enforcement working in their official capacity.

State Police Officer Johnson was not in police uniform when he arrived at the Brown residence. He did not identify himself as a Federal ATF Agent to Zerak Brown, or give any indication he was there in his official capacity as a federal agent on federal business. His entire purpose for being present was to recover Jasmine Theis's belongings. Officer Johnson, or those state officers present were not present for any other purpose.

An altercation ensued when Brown refused entry to everyone present, due to lack of a warrant. This resulted in Officer

Bridges - not Officer Johnson - pulling Brown out of his house. (See: Transcript, Case No. 1:20-cr-00168; pg. 119, ln. 10); This was done without a warrant, against his consent and in violation of the 4th Amendment of the U.S. Constitution.

It was Officer Bridges who wrestled Brown to the ground and held him in a bearhug. Brown eventually broke out away from Officer Bridges, while Johnson stood to one side with his weapon drawn and threatening to shoot.

After Brown broke away from Bridges, he jumped up and ran away. As he passed Johnson, he pushed him out of the way. Johnson once again threatened to shoot Brown, and Brown responded by saying, "Shoot me motherfucker" and ran into the alley next to the house.

During this entire altercation and the events which followed, Officer Johnson never once identified himself as a federal officer. The reasons for this are simple: he was not present on behalf of the federal government, and had no reason to be. He was accompanied by two Viburnum Police Officers that were known by Zerak Brown. There was no warrant, state or federal, and nothing in plain sight which would justify any federal involvement. He was only present in his official capacity as a State Police Officer, and nothing else. All the supplemental police reports, including Johnson's own, refer to Sergeant Jeff Johnson as a Missouri State Highway Patrol Officer. These same police reports also indicate Johnson's presence was a result of the Viburnum Police Department requesting a "special investigation" into Ira Brown (Zerak Brown's father) due to the fact he was working at their dispatch office.

There was no violation of any federal statute, and Johnson being

present on strictly state business meant that his federal "hat" had been hung up.

Zerak Brown had never met State Police Officer Johnson, and because Officer Johnson never identified himself as a federal officer, Zerak Brown had no way of knowing he was a ATF Agent.

Suddenly, the altercation between Zerak Brown and the officers which showed up at his door becomes a federal matter, despite the fact that those officers present were a combination of State Police and local, Viburnum Police Department, all there on state matters.

State Police Officer Johnson was not acting in his official capacity as a ATF Agent for the federal government, he was State Police. You can hang up one hat for another when appropriate, but there has to be a reason. The government, the District Court, nor the Court of Appeals have ever provided justification for this to be a federal matter, and have allowed State Police Officer Jeff Johnson to wear both "hats" at the same time. This violates this Court's precedent concerning dual employment by federal officials.

All those officers present were there to recover personal property of a possible victim of an unrelated incident which was entirely state business. Why it took so many to do this is rather suspicious, but still had nothing to do with Zerak Brown.

This is not federal matter, this is a state matter. More suited for prosecution in the State of Missouri instead of federal court. A State Police Officer acting in his official capacity can't be a federal officer at the same time. He can only wear one hat at a time.

State and Local Police  
Breached the Petitioner's Doorway  
In Violation Of  
The 4th Amendment of the U.S. Constitution

When State Police Officer Johnson arrived at 17 St. Joseph Street in Viburnum, Missouri he was accompanied by two VPD Officers and one witness: Officers Johnathon Bridges, Josh Callahan, and Sergeant Brenda Cone. Bridges and Callahan were both wearing standard black outfits with vests and hats, while Sergeant Cone was wearing a dress and escorting Jasmine Theis. (See: "Affidavit of Zerak Brown"); All those present were there to retrieve Jasmine Theis's belongings, from a domestic dispute from earlier in the day involving a different defendant other than Zerak Brown (Ira Brown).

Zerak Brown refused the officers entry into the residence due to lack of a warrant, he was standing on the porch at this time. Johnson repeatedly asked Brown for entry into the house, and at one point grabbed his arm, causing him to pull away from him. When one of the officers (Bridges) contacted Ira Brown (the petitioner's father) on a cell phone, the petitioner had already stepped back into the residence and was standing in the doorway, at the threshold of his house. This is verified by the police report, written by Officer Brenda Cone. (See: "Supplement 1 Interview of Ira Brown" pg. 6, Sec. 28) (Appendix "F");

This is also verified by the petitioner's own personal account of the events, (See: "Affidavit of Zerak Brown") and Sergeant Johnson's trial testimony. "[Officer Bridges] actually pulled [Zerak Brown] out of the doorway[.]" (Transcript, Vol. 1, pg. 119, ln. 10), despite his initial police report omitting it entirely.

Once Officer Bridges contacted Ira Brown on a cell phone, he handed the phone to the petitioner, who was still standing at the threshold of his house. Bridges, misunderstanding the comment made by Ira Brown to his son, grabbed the petitioner out of the residence and held him in a bearhug, tightening his grip until the petitioner was forced to break out of it before he lost consciousness. (Affidavit, pg. 4);

Once the petitioner broke out of the bearhug, he tried to run but was tackled by Bridges, who once again grappled with him on the ground. At no point was he grappling with Sergeant Johnson, there was no physical contact between the two except for when Johnson placed his hand on the petitioner's arm while he was standing on the porch, and when the petitioner finally broke free of the officers and shoved Johnson out of the way as he ran behind the house. (Affidavit, pg. 3, 4);

If an arrest warrant is not present, police must have probable cause to arrest a suspect. See: United States v Reeves, 524 F.3d 1161 (10th Cir. App. 2008) "[ ]Analyzing whether police illegally seized a suspect turns on the nature of the encounter[.]" Reeves analyzes three conditions to determine constructive entry into a defendant's residence. 1) Was it a consensual encounter? 2) Was there an investigatory stop? 3) Was an arrest warrant present, or was there probable cause for an arrest?

Despite Zerak Brown speaking voluntarily with those present, he refused them entry into the house due to lack of a warrant, and it was not an investigatory stop because those officers present were there to retrieve the belongings of a possible victim of a domestic dispute that Zerak Brown had nothing to do with.

There was no probable cause stated that would justify Officer Bridges grabbing Zerak Brown and yanking him out of his own residence, and this has never been properly questioned by the Court, and summarily ignored by both the District Court and the Court of Appeals. Even though Officer Bridges had not fully understood what was overheard on the cell phone, it wasn't Zerak Brown saying it. It was his father, Ira Brown who happened to be at the dispatch office, where the call was answered. Bridges violated Zerak Brown's Fourth Amendment rights by forcefully removing him from his place of residence, against his wishes and without a warrant, after Brown had refused them entry into the house. This was not "constructive entry".

"The Fourth Amendment tolerates only reasonable mistakes [by police]."Heien v North Carolina, 564 U.S. 54 S.Ct (2014); See also: Cortez v McCauley, 478 F.3d 1108, 1115 (10th Cir. 2007);

A warrantless search can only be triggered by what is in plain sight, and police need exigent circumstances before acting. The record, including the officer's own testimony and police reports, reflect there were no exigent circumstances, probable cause, no evidence in plain view of police, and it was not a consensual encounter. United States v Mowatt, 513 F.3d 395 (4th Cir. App. 2008) (vacated due to improper and illegal search and seizure);

The Supreme Court has clearly delineated the boundaries police must respect regarding the entrance to a private residence. "The Fourth Amendment has drawn a firm line at the entrance to the house, absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."Payton v New York, 445 U.S. 573, 589, 100 S.Ct. 1371, 63 L.Ed. 639 (1980);

The police violated the petitioner's Fourth Amendment rights by laying hands on him, and without a warrant, provocation or cause, forcefully removed him from his own house. Both the District Court and the 8th Circuit Court of Appeals ignored both Circuit precedent and Supreme Court precedent by refusing to consider it, and thereby allowing a Constitutional violation to stand.

Zerak Brown's Constitutional rights were violated, leading to a confrontation with police which was entirely unnecessary and could have been avoided. He is currently serving a 125 month sentence as a result.

## Conclusion

1. The Sixth Amendment to the Constitution of the United States guarantees a criminal defendant the right to counsel "in all criminal prosecutions", and all rights which follow that guarantee fall under it. This grants assistance of counsel for every stage of the proceedings, and is readily defined in that single phrase.

Both Supreme Court and Eighth Circuit precedent both agree the finality of a defendant's criminal conviction is not at the end of the appellate process, but concludes once the Supreme Court affirms a conviction based on the merits on direct review, or denies a petition for a writ of certiorari. The U.S. Supreme Court needs to define the bright line of when a criminal prosecution actually ends.

2. Both the District Court and the Eighth Circuit Court of Appeals have based their decision and finding of guilt on erroneous information which was purposely misrepresented by the government, and used to bolster their position. The petitioner corrected the record in his Petition for Rehearing to the Appellate Court. This Motion was denied on October 17, 2023, but the facts entered into the record contradict the narrative presented by the government and accepted by both Courts.

Factual inaccuracies in the record can affect the outcome of a case when those facts are omitted or purposely misrepresented, and Zerak Brown disputes that version of events presented by the government.

3. State Police Officer Jeffrey Johnson was not in uniform when he arrived at the Brown residence. He did not show any identify himself as a federal ATF agent to Zerak Brown, nor did he give any indication he was there in his official capacity as a federal agent on federal

business. His entire purpose for being present was to recover the belongings of a possible victim of a previous, unrelated domestic dispute that Zerak Brown had nothing to do with.

It is not uncommon for law enforcement officers to have dual employment, for both State and Federal. This practice is commonly referred to as "wearing two hats", and often necessary. The U.S. Constitution does not forbid federal and state authorities from wearing two hats. It does forbid them from wearing them at the same time. State Police Officer Johnson was on state business when he arrived at the Brown residence as a State Police Officer, and nothing else. There was no warrant - state or federal, and nothing in plain sight which would justify federal involvement. He was only present in his official capacity as a State Police Officer.

Suddenly, conveniently, it was a federal matter and Johnson was now present as a federal agent, despite never providing identification to demonstrate this.

There was no violation of any federal statute, and Johnson was not acting in his official capacity as an ATF Agent for the federal government.

The Supreme Court needs to define the fine line between state and federal authorities, and the specific set of circumstances which will bring a purely state matter into the federal realm of justice.

4. Zerak Brown was standing in his doorway, when Officer Bridges, not State Police Officer Johnson, pulled him out of the doorway. This was done without a warrant, provocation or cause, and violated the petitioner's Fourth Amendment right.

This also violates the boundaries the Supreme Court has clearly delineated regarding the entrance to a private residence, and was done after Brown had refused them entry into the house.

Both the District Court and the 8th Circuit Court of Appeals have ignored both circuit precedent and precedent established by this Court by refusing to consider this violation, and by doing so, they are allowing a violation of the Constitution to stand.

Zerak Brown's Constitutional rights were violated, leading to a confrontation with police which was entirely unnecessary and could have been avoided. He is currently serving a 125 month sentence as a result.

#### Prayer For Relief

Wherefore, for the foregoing reasons the petitioner prays this Honorable Court will Grant Certiorari, and anything else the Court deems Just and Proper.

Respectfully Submitted,



Zerak Brown - 16397-509  
USP Marion

01/08/2024

Pro se