

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHELDON D. SIMMONS — PETITIONER
(Your Name)

vs.

RYAN GARRETT, JEMMY MCCREE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS (5th ^{Fifth} circuit)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SHELDON D. SIMMONS
(Your Name)

12071 FM 3522
(Address)

ABILENE, TEXAS 79601
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Did the 5th circuit court of Appeals enter a decision in this matter that conflicts with a principle case decided by its own circuit?
(CARSON V. POLLEY, 689 F.2d 566, 571, 573, 574 (5th cir))
- 2.) Does this conflicted decision call for an exercise of the Supreme Court's ~~supervisory~~ ~~powers~~ review?
- 3.) Does this decision, which conflicts with a principle case/decision made by its own circuit, call for the Supreme Court to "resolve" the conflict² and/or accept the case for review?
- 4.) Did the district court "err" when it failed to adhere to Federal rules of evidence; Rule 404(b) by not allowing petitioner's Attorney's to introduce "contradictory extrinsic evidence" to ~~before~~ the jury?
- 5.) Were the prior use of force reports of both defendants GARRETT and MOREE relevant to this issue of intent?
- 6.) Were these prior use of force reports of both defendants GARRETT and MOREE admissible under the "intent" exception to the general Rule against character evidence pursuant to ~~404(b)~~ Fed. R. Ev. 404(b)?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 6, 2017.

☒ No petition for rehearing was timely filed in my case. (sent petition to the Fifth circuit on 2-21-18 waiting for an answer.)

☐ 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).

☐ 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

- 1.) Federal Rules of Evidence
(Rule #404(b))
- character evidence not admissible to prove conduct; exceptions; other crimes.
- 2.) 14th Amendment: All persons born naturalized in the United States ~~are~~ subject to the jurisdiction thereof are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of life, liberty or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the law.
- 3.) Federal Rules of Evidence (Rule #404(b))
- Provides that "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, planning, ~~knowing~~ knowledge, identity, or absence of mistake or accident."
- "The district court declined to admit these performance reports, finding them inadmissible under 404(b). We hold that the district court should have admitted these exhibits and its failure to do so affected substantial rights of Carson, thus warranting reversal". Carson v. Polley, 689 F.2d 562, 572 (5th 1982) Fed. R. Evid. 404(b)
- 4.) In all criminal prosecutions, the Accused shall enjoy the right to a speedy ~~trial~~ and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district 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 be confronted with the witnesses in his favor, and to have assistance of counsel for his defense.

STATEMENT OF THE CASE

This case arose out of a use of force that occurred on 11-26-09 at the Wynne unit within The Texas Department of Criminal Justice. During this use of force the petitioner was irrefutably pushed/shoved face first through a glass window sustaining serious injuries. Petitioner contends that he was a victim of "excessive", sadistic & malicious force while the defendants contend that the petitioner was "accidentally" shoved/pushed face first through the glass window. Petitioner was rushed to the Emergency Room on 11-26-09. Petitioner filed a 1983 civil suit in the United States District Court, Southern District (Houston Division) in 2011.

The case proceeded to a 3 day trial in September, 2015 where a jury ruled in the defendants favor. The plaintiff appealed to the 5th circuit court of appeals and they ~~affirmed~~ affirmed the district court's decision on 12-06-17.

During trial petitioner's lawyer (collin pagge) made a "diligent" effort to have (3) use of force reports from the defendants' disciplinary history ^{admitted but} ~~was~~ "erroneously" prohibited from doing so by Judge Sam Lake. During a pretrial hearing petitioner's attorneys filed a motion in limine in regards to the admissibility of the use of force reports from the defendants' disciplinary history and the judge "granted" this motion in limine.

Also, during trial petitioner's lawyer (collin pagge) made an offer of proof outside the presence of the jury. During this offer of proof with defendant Jeremy B. McCreel petitioner's attorney irrefutably laid predicate.

The fact that there is a principle case from the 5th circuit (Carson v. Polley, 689 F.2d 566, 571, 573, (5th Cir.)) that is of the same nature as the decision of which review is sought, was clearly illustrated to the judge during trial 9/2015 however, the ~~jailed~~ judge "erroneously" refused to allow the "contradictory extrinsic" evidence to be shown to the jury or admitted into evidence.

A copy of the 5th circuit United States court of appeals' decision on this matter is attached hereto. Plus U.S.D.C. Final Judgment is also attached hereto.

REASONS FOR GRANTING THE PETITION

One of the primary reasons that this petition should be granted is the existence of a conflict between the decision of which review is sought and a decision made by the ~~5th~~ 5th circuit court of appeals on the same issue. Within the petitioners appeal brief, which was reviewed by the 5th circuit, petitioner clearly illustrated the fact that during his trial in the district court Judge Simon Lake "erroneously" refused to allow extrinsic evidence to be admitted into evidence. Petitioner properly cited (Carson v. Polley, 689 F.2d 574, 571, 566) which is a "principle" case that was decided by the 5th circuit where the judge in that case "erroneously" refused to allow extrinsic evidence to be admitted into evidence. In this case the judge made the same "error" which caused ~~harm~~ harm. Pursuant to considerations governing review on certiorari (Rule 10) "an important function of the Supreme Court is to 'resolve' disagreements among lower courts about specific legal questions".

There is an irrefutable "conflict" between the decision of which review is sought and a decision of the 5th circuit on the same issue (Carson v. Polley, 689 F.2d 574, 571, 566. Also United States v. Belchum, 582 F.2d 898, 911 (5th Cir. 1979)). Hence, there is a need here for the Supreme Court to ~~exercise~~ ~~supervisory powers~~ accept this case for review.

The trial court's failure/refusal to adhere to Federal Rules of evidence (Rule 404(b)) resulted in petitioners 14th amendment right to due process of the law ^{being} ~~was~~ violated. (Also petitioners 6th Amendment right was violated as well.)

This case meets the Supreme Court's criteria for accepting a case for review mainly because of ^{the} existence of a conflict between the decision of which review is sought and the decision of a principle ^{CASE} from the 5th circuit (Carson v. Polley, 689 F.2d 571, 574, 566 (5th Cir.) (1982)).

(continuation of Reasons for Granting the petition)

The district court "erroneous" decision to exclude the use of force reports that petitioners lawyers attempted to admit into evidence irrefutably affected substantial rights of Simmons (petitioner) United States v. Beechum, 582 F.2d 898, 911 (5th Cir. 1978)

"In so applying Beechum to our case, we find ^{that} ~~that~~ performance evaluation report on deputy Sheriff Holley was relevant to his intent, loss of temper and consequent intentional hostility towards other detainees on earlier occasions made it more likely that a similar intent was present in Holley's conduct toward Carson." Carson v. Polley, 689 F.2d 562, 572 (5th Cir. 1982)

Petitioners Lawyer Attempted to admit prior use of force reports of both defendants in an effort to rebut their claim that the plaintiff/petitioner was "accidentally" shoved face first through the glass window on 11-26-09. However, the judge "erroneously" refused to allow the extrinsic evidence to be admitted into evidence and as a result petitioners constitutional right to equal protection and due process of the law were violated, thus warranting reversal. Fed. R. Ev. 404(b)

"The evidentiary errors relating to these exhibits were of OR significance to the plaintiffs case and requires us to direct a new trial." Carson v. Polley, 689 F.2d 562, 572 (5th Cir. 1982)

Rule 404(b) provides that evidence of other crimes, wrongs or acts is not admissible to provide prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, planning, knowledge, identity or absence of mistake or accident." Fed. R. Ev. 404(b)

"Carson offered the performance evaluations as extrinsic evidence of the intent of two of the defendants to commit an assault and battery on Carson." Carson v. Polley, 689 F.2d 562, 572 (5th Cir. 1982)

(Continued from reasons for granting the petition)

"The relevancy of the extrinsic offense derives from the defendant's indulging himself in the same state of mind in the preparation of both the extrinsic and the charged offenses. The reasoning is that because the defendant had unlawful intent in the extrinsic offense, it is less likely that he had lawful intent in the present offense." Fed. Rules of Evidence 404(b) United States v. Beechum, 582 F.2d 898, 911 (5th Cir. 1979)

"The district court declined to admit these performance reports, finding them inadmissible under 404(b). We hold that the district court should have admitted these exhibits and its failure to do so affected substantial rights of Carson, thus warranting reversal." Carson v. Polley, 689 F.2d 562, 572 (5th Cir. 1982)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sheldon Simmons

Date: 2/21/18