

# SUPREME COURT OF LOUISIANA

*No. 98-K-2813*

STATE OF LOUISIANA

Versus

TOMMY ANTHONY COLOMB

LEMMON, J., Concurring

At the outset, I disagree with the dicta in State v. Brown, 428 So. 2d 438, 442 (La. 1983), that evidence of other crimes included in the res gestae is admissible without balancing its probative value against the prejudicial effect.<sup>1</sup> The majority states that it is not necessary to decide the issue in this case, but goes on to review the balancing factors.

On the merits, the prosecutor argues that it introduced the evidence of defendant's possession of drugs in order to show that he was a drug dealer which in turn raised the inference that drug dealers carry guns. This inference, the prosecutor contends, provided support for a conclusion that defendant was in constructive possession of his wife's gun found in his wife's car that he was driving.

I disagree that the evidence submitted by the prosecutor established that defendant was a dealer, rather than a user, of drugs. Therefore, the evidence of his possession of drugs simply showed that he was a bad person, rather than constituting relevant evidence of constructive possession, and should have been excluded under La. Code Evid. art. 403.

Nevertheless, defendant's own statement that "I just use it [his wife's gun] for

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<sup>1</sup>I declined to join in the Brown opinion because I disagreed with the dicta that was not essential to the holding.

my protection” made the admission of the other crimes evidence of drug possession harmless beyond a reasonable doubt. Chapman v. California, 386 U. S. 18 (1967); State v. Gibson, 391 So. 2d 421 (La. 1980). I therefore concur in the judgment.