

SUPREME COURT OF LOUISIANA

No. 17-KK-1586

STATE OF LOUISIANA

VERSUS

RYAN MINER

**ON SUPERVISORY WRIT TO THE CRIMINAL DISTRICT
COURT, PARISH OF ORLEANS**

PER CURIAM:

Writ granted in part. Code of Evidence article 404(B)(1) embodies the settled principle that evidence of other crimes may be admissible if the state establishes an independent and relevant reason for its admission. *State v. Taylor*, 16-1124, p. 12 (La. 12/1/16), 217 So.3d 283, 292. It is the duty of the district court in its gatekeeping function to determine the independent relevancy of this evidence. *State v. Altenberger*, 13-2518, pp. 7–8 (La. 4/11/14), 139 So.3d 510, 515; *State v. Garcia*, 09-1578, pp. 54–55 (La. 11/16/12), 108 So.3d 1, 39. The district court must also balance the probative value of the other crimes, wrongs or acts evidence against its prejudicial effects before the evidence can be admitted. *State v. Henderson*, 12–2422, pp. 1–2 (La. 1/4/13), 107 So.3d 566, 567–68. Here, testimony of one codefendant at a prior unrelated trial that the two codefendants drove through the same neighborhood while armed with an AK-47 just six weeks before the drive-by shootings with which they are now charged is admissible under the principles above. Defendant fails to show the district court erred in performing its gatekeeping function.

However, if the codefendant exercises his right not to testify, the admission

of this evidence at the joint trial would certainly violate *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), in which the United States Supreme Court held that the admission of testimonial hearsay statements violates the Confrontation Clause unless the hearsay declarant is unavailable at trial and the defendant has previously had an opportunity to cross-examine the declarant about the subject of the hearsay statements. *Crawford*, 541 U.S. at 68, 124 S.Ct. at 1374. Although it is unknown at this time whether the codefendant will ultimately testify at trial, the risk of reversible error is too high under the circumstances to allow the joint trial to proceed after determining the other crimes evidence will be admitted. *See generally* La.C.Cr.P. arts. 495.1, 704(2). Therefore, the state must now decide whether it wishes to sever the trials or jointly try the codefendants but not utilize this other crimes evidence at the joint trial. The matter is remanded to the district court to allow the state the opportunity to make this election and for further proceedings consistent with these views.

REVERSED IN PART AND REMANDED