

No.
IN THE
SUPREME COURT OF THE UNITED STATES

LAEL J. ALLEYNE,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

On Petition for a Writ of Certiorari to
the Pennsylvania Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of Pennsylvania erred in denying a Petition for Allowance of Appeal despite the trial court's improper exclusion of voluntary manslaughter due to imperfect self-defense in its jury instructions.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Lael J. Alleyne, Petitioner

Commonwealth of Pennsylvania, Respondent

TABLE OF CONTENTS

Question Presented for Review	i
Parties to the Proceedings	ii
Appendices	iv
Table of Authorities	v
Opinions Below	1
Basis For Jurisdiction In This Court	2
Constitutional Provisions, Treaties, Statutes, Ordinances, And Regulations Involved	2
Statement Of The Case	3
Reasons To Grant This Petition	4
I. THE DECISION OF THE PENNSYLVANIA SUPREME COURT CONFLICTS WITH THE CLEAR PURPOSE OF PROPER JURY INSTRUCTION	4
1. The Pennsylvania Supreme Court's denial constitutes an objectively unreasonable application of federal and state law	5
2. The Pennsylvania Supreme Court's denial infected the entire trial with unfairness ...	6
Conclusion	7

APPENDICES

Non-Precedential Opinion of the Superior Court of Pennsylvania (December 27, 2017)	A-1
Judgment of Sentence in the Court of Common Pleas of Northampton County Criminal Division at No(s): CP-48-CR-0001098-2015 (December 8, 2016)	A-11
Denial of Petition for Allowance of Appeal from the Order of the Superior Court, delivered by the Supreme Court of Pennsylvania (June 13, 2018)	A-22

TABLE OF AUTHORITIES

Cases

<i>Commonwealth v. Browdie</i> , 671 A.2d 668 (Pa. 1996)	9
<i>Cupp v. Naughten</i> , 414 U.S. 141, 38 L. Ed. 2d 368, 94 S. Ct. 396 (1973)	7,10
<i>Estelle v. McGuire</i> , 502 U.S. 62, 116 L. Ed. 2d 385, 112 S. Ct. 475 (1991)	7
<i>Henderson v. Kibbe</i> , 431 U.S. 145, 97 S. Ct. 1730, 52 L. Ed. 2d 203 (1977)	10
<i>Middleton v. McNeil</i> , 541 U.S. 433, 124 S. Ct. 1830 (2004)	7,8,9
<i>Sandstrom v. Montana</i> , 442 U.S. 510, 61 L. Ed. 2d 39, 99 S. Ct. 2450 (1979)	7
<i>Williams v. Taylor</i> , 529 U.S. 362, 146 L. Ed. 2d 389, 120 S. Ct. 1495 (2000)	2,6
<i>Yarborough v. Gentry</i> , 540 U.S. 1, 157 L. Ed. 2d 1, 124 S. Ct. 1 (2003)	6

Constitutional Provisions and Statutes

<u>U.S. Constitution, Amendment V</u>	<u>3</u>
<u>U.S. Constitution, Amendment VI</u>	<u>3</u>
<u>U.S. Constitution, Amendment XIV</u>	<u>4</u>
<u>18 Pa.C.S.A. § 2502</u>	<u>10</u>

18 Pa.C.S.A. § 2503(b)	9,11
28 U.S.C. § 1257	2
28 U.S.C. § 2254	2,6

PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully requests that a writ of certiorari issue to review the Denial of his Petition for Allowance of Appeal from the Order of the Superior Court by the Pennsylvania Supreme Court on June 13, 2018. Underlying, the Pennsylvania Supreme Court's Denial of Petition for Allowance of Appeal is the Pennsylvania Superior Court's Opinion Denying in Part Petitioner's direct appeal that was entered in this case on December 27, 2017.

OPINIONS BELOW

The June 13, 2018, Order of the Supreme Court of Pennsylvania denying Alleyne's Petition, which decision is herein sought to be reviewed, was issued without a published opinion and can be found at *Commonwealth v. Alleyne*, 187 A.3d 903 (Pa. 2018). The December 27, 2017, Non-Precedential Opinion of the Superior Court of Pennsylvania was unpublished, but is reprinted in the appendix. The December 8, 2016, Judgement of the Court of Common Pleas was unpublished, but is reprinted in the appendix.

BASIS FOR JURISDICTION IN THIS COURT

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

Williams v. Taylor, 529 U.S. 362, 405, 146 L. Ed. 2d 389, 120 S. Ct. 1495 (2000), provides “a state-court decision is contrary to this Court's precedent if the state court arrives at a conclusion opposite to that reached by this Court on a question of law.”

28 U.S.C. § 2254 states:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The Fifth Amendment of the United States Constitution states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment of 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.

Section 1 of the Fourteenth Amendment of the U.S. Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner, Lael Alleyne, was convicted on September 12, 2016, on one (1) count of First Degree Murder, two (2) counts of robbery, two (2) counts of conspiracy to commit robbery, one (1) count of possession of an instrument of crime, and one (1) count of possession of a firearm by a minor. These charges stemmed from an incident on December 22, 2014, in which the two victims, while parked awaiting an opportunity to sell marijuana, came into conflict with Alleyne and another man, and Alleyne fired at and killed one of the victims.

On December 8, 2016, Alleyne was sentenced to a term of state incarceration of 38 years to life for the murder conviction, 6-12 years for one robbery

conviction, 6-12 years for one conspiracy conviction, 4-8 years for the other robbery conviction, 3-6 years for the other conspiracy conviction, 3-6 months for the possession of instruments of crime conviction, and 1-2 months for the possession of firearms by a minor conviction. The sentences for murder and the two robberies were run consecutively, while all other sentences were run concurrently, for an aggregate term of 48 years to life imprisonment.

Following this judgment, Alleyne filed a timely appeal with the Superior Court of Pennsylvania, arguing in part that the trial court erred in refusing to offer jury instructions as to voluntary manslaughter, based upon a theory of imperfect self-defense. That court issued a non-precedential opinion affirming in part and reversing in part on December 27, 2017, which reversed the second conspiracy to commit robbery sentence but ultimately left Alleyne's aggregate sentence unchanged. The opinion concluded, in relevant part:

Appellant admits "the shooter" only began firing the gun into [the victim's car] as [the victim] drove it in reverse in order to escape. . . As Appellant concedes, [the victim] was attempting to *escape* at the time he was shot. Appellant has thus wholly failed to demonstrate any circumstances which would justify a voluntary manslaughter jury instruction. Based on the foregoing, we find that Appellant was not entitled to a voluntary manslaughter jury

instruction.

Alleyne filed a Petition for Allowance of Appeal from the Order of the Superior Court on January 26, 2018. This was denied by the Supreme Court of Pennsylvania on June 13, 2018.

This Petition for Certiorari followed.

REASONS TO GRANT THIS PETITION

I. THE DECISION OF THE PENNSYLVANIA SUPREME COURT CONFLICTS WITH THE CLEAR PURPOSE OF PROPER JURY INSTRUCTION

28 U.S.C. § 2254(d)(1) states that a federal court may grant habeas relief to a state prisoner if a state court's adjudication of his constitutional claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." This Court has found that "a state-court decision is contrary to this Court's precedent if the state court arrives at a conclusion opposite to that reached by this Court on a question of law." *Williams v. Taylor*, 529 U.S. 362, 405, 146 L. Ed. 2d 389, 120 S. Ct. 1495 (2000). When an appellant seeks to challenge a state court's application of federal law, "[that application] must be shown to be not only erroneous, but objectively unreasonable." *Yarborough v. Gentry*, 540 U.S. 1, ___, 157 L. Ed. 2d 1, 124 S. Ct. 1 (2003) (*per curiam*); see *Williams*, 529 U.S. at 409.

As jurors are rarely versed in the finer points of the law, jury instructions play a vital role in making it possible for a jury of one's peers to provide the fair trial mandate by the Constitution. Within the context of a criminal trial, "the State must prove every element of the offense, and a jury instruction violates due process if it fails to give effect to that requirement." *Middleton v. McNeil*, 541 U.S. 433, 437, 124 S. Ct. 1830, 1832 (2004); see *Sandstrom v. Montana*, 442 U.S. 510, 520-521, 61 L. Ed. 2d 39, 99 S. Ct. 2450 (1979). When deciding whether any given "ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation... [t]he question is 'whether the ailing instruction . . . so infected the entire trial that the resulting conviction violates due process.'" *Middleton v. McNeil*, 541 U.S. at 437 (quoting *Estelle v. McGuire*, 502 U.S. 62, 72, 116 L. Ed. 2d 385, 112 S. Ct. 475 (1991)); see *Cupp v. Naughten*, 414 U.S. 141, 147, 38 L. Ed. 2d 368, 94 S. Ct. 396 (1973).

The lack of proper jury instructions in Alleyne's case amounts to a violation of his due process rights. By failing to instruct the jury as to the possibility of convicting him of voluntary manslaughter, despite evidence presented that satisfied those requirements, the trial court prevented the jury from properly applying the facts of the case to the law. This deficiency was an objectively unreasonable application of law, which necessarily infected Alleyne's trial with unfairness.

- 1. The Pennsylvania Supreme Court’s denial constitutes an objectively unreasonable application of federal and state law**

The Pennsylvania Superior Court’s decision, and, by virtue of denying Alleyne’s appeal, the Pennsylvania Supreme Court’s decision, holding that there was no error in the trial court’s failure to offer the jury instructions as to imperfect self-defense was objectively unreasonable based upon both federal and state law.

Middleton v. McNeil, 541 U.S. at 433–39, offers an important point of reference for understanding federal law regarding jury instructions. *Middleton* also concerned questions surrounding imperfect self-defense jury instructions. Specifically, the case centered on whether the addition of certain words to imperfect self-defense instructions neutered those instructions to such a degree as to render them essentially absent. Though this Court ruled that the instructions were acceptable, it did so because “the state court did not ignore the faulty instruction. It merely held that the instruction was not reasonably likely to have misled the jury given the multiple other instances where the charge correctly stated that respondent’s belief could be unreasonable.” *Middleton*, 541 U.S. at 437–38 (punctuation and citations omitted). Thus, because the state made multiple efforts to ensure that the imperfect self-defense language was given to the jury, one piece of faulty language did not render the instruction deficient to the point of absence.

That was not the case for Alleyne. Unlike in *Middleton*, neither the trial court nor the state provided the imperfect self-defense language multiple times before, once, provide instructions so faulty as to be absent. Instead, Alleyne's jury was *never* provided the instructions, despite hearing testimony that the victim made a sudden lurching movement immediately before being shot, and that this lurching motion was in the direction of the gun he kept in his waistband. With no knowledge of the potentiality of a voluntary manslaughter sentence and the fact of a dead victim, the jury was left with little choice but to choose the harsher sentence provided to them.

The jury instructions are all the more unreasonable when viewed in light of applicable state law. In Pennsylvania, in cases in which the defendant is charged with criminal homicide, a trial court must instruct the jury on voluntary manslaughter when the offense "has been made an issue in the case and where the trial evidence reasonably would support such a verdict." *Commonwealth v. Browdie*, 671 A.2d 668, 674 (Pa. 1996). Voluntary manslaughter due to an unreasonable belief that the killing is justifiable, as defined by 18 Pa.C.S.A. § 2503(b), occurs when "at the time of the killing [the defendant] believes the circumstances to be such that, if they existed, would justify the killing . . . but his belief is unreasonable."

By the surviving victim's own testimony, Alleyne had been pointing his gun at him, not the deceased, and only pointed it at the deceased and began shooting once the deceased put the vehicle in reverse. To place the vehicle in reverse, Raymond swiftly moved his right hand from the steering wheel

downward, a fast motion which could reasonably have been interpreted as reaching for the gun secured at his waist. Meanwhile, given that the deceased's firearm was found on the floor of the driver's seat, it is likely the gun would have been visible as he moved his hand downward. If Alleyne believed the deceased was reaching for the gun, then he could have believed, however unreasonably, that he was about to be shot, making self-defense by deadly force justified. Unfortunately, despite the presentation of these facts to the jury, warranting an imperfect self-defense voluntary manslaughter instruction, the trial court presented no such instruction, an unreasonable application law given these circumstances.

2. The Pennsylvania Supreme Court's denial infected the entire trial with unfairness

An improper state court instruction warrants the granting of habeas relief only upon a showing that "the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process, not merely [that] the instruction is undesirable, erroneous, or even universally condemned." *Cupp*, 414 U.S., at 147. In instances in which the issue is not an erroneous instruction, but instead the omission of an instruction, the "significance of the omission of such an instruction may be evaluated by comparison with the instructions that were given." *Henderson v. Kibbe*, 431 U.S. 145, 156, 97 S.Ct. 1730, 52 L. Ed. 2d 203 (1977). [and so...]

18 Pa.C.S.A. § 2502 defines First Degree Murder as the commission of an "intention killing,"

with intentional killing defined as “[k]illing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.”¹⁸ Pa.C.S.A. § 2503(b), by comparison, states that imperfect self-defense occurs when “at the time of the killing [the defendant] believes the circumstances to be such that, if they existed, would justify the killing . . . but his belief is unreasonable.” Though both crimes share the element of a killing, the essential element, that of intent, is fundamentally different between them.

This fundamental difference created a taint of unfairness that colored the trial as a whole. The jury was provided the evidence demonstrating Alleyne’s unreasonable belief in the justification of the shooting as his motive, but was not provided the means to use it. Jurors are not lawyers, nor are they expected to be. Jury instructions exist in order to allow a jury of one’s peers to take the evidence presented to them and apply the facts, as they decide them, to the law. Without the proper instructions to allow this application, however, a fair trial becomes impossible. For that reason, Alleyne was unable to receive the fair trial he deserved.

CONCLUSION

Lael Alleyne demonstrated at trial the distinct possibility that his killing of the victim, though wrong, did not rise to the level of First Degree Murder. Unfortunately, the members of the jury never properly considered the prospect of charging him with Voluntary Manslaughter because the judge failed to instruct them as to this possibility. This

failure, affirmed by the Pennsylvania appellate courts, represents an objectively unreasonable application of federal and state law that served to infect Alleyne's judicial process with unfairness.

Respectfully submitted,

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