

18-6721

IN THE  
UNITED STATES SUPREME COURT

Gavin Keith Cullens  
Petitioner

FILED  
JAN 12 2018  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

vs

U.S Court of Appeals (6th Cir.) NO<sup>#</sup> 16-2512

C-C-2-13-11835

Cindi Curtin  
Respondent

PETITION FOR WRIT OF CERTIORARI

THE U.S COURT OF APPEALS WAS THE LAST COURT TO RULE ON THE MERITS OF  
MY CASE.

GAVIN KEITH CULLENS # 270393  
LAKELAND CORRECTIONAL FACILITY  
141 FIRST STREET  
COLDWATER, MI 49036

QUESTION PRESENTED FOR REVIEW

DID THE TRIAL COURT ERR WHEN IT GAVE OUT SELF DEFENSE INSTRUCTION FOR COMPLAINANTS WHO WERE NOT ACCUSED OF ANY CRIMES TO WARRANT A DEFENSE? ALTERNATIVELY WAS THE TRIAL COUNSEL INEFFECTIVE IN FAILING TO OBJECT WHICH VIOLATED THE ACCUSE DUE PROCESS RIGHTS?

PETITIONER CULLENS ANSWER - YES

KENTUCKY SUPREME COURT (JONES VS COMMONWEALTH OF KENTUCKY 366 S.W.3d 376; 2011 KY LEXIS 133) --ANSWER --"YES"

STATE OF MICHIGAN ANSWER "NO"

U.S DISTRICT COURT OF EASTERN MICH ( NO# 2-13-c-v-11835, 2016 WL 5476247 -----ANSWER---"NO"

U.S COURT OF APPEALS (6TH CIR) (NO# 16-2512) --ANSWERS-- "NO"

I\*

LIST OF PARTIES

[X]x] 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:

PEOPLE OF THE STATE OF MICHIGAN NO#296492

Cullens vs Curtin No 16-2512

## WRIT OF CERTIORARI

### TABLE OF CONTENT

QUESTION PRESENTED FOR REVIEW.....	I
LIST OF PARTIES.....	II
TABLE OF CONTENT/[AUTHORITIES/STATUTES/RULES].....	III
REFERENCE TO OPINIONS/ORDERS BELOW.....	IV
STATEMENT OF JURISDICTION.....	V
CONSTITUTIONAL PROVISIONS and STATUTES.....	VI
STATEMENT OF THE CASE.....	p1
ARGUMENT:	
THE TRIAL COURT ERRED WHEN IT GAVE OUT SELF DEFENSE INSTRUCTIONS FOR COMPLAINANTS WHO WERE NOT ACCUSED OF ANY CRIMES TO WARRANT A DEFENSE. ALTERNATIVELY TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT WHICH VIOLATED THE ACCUSED DUE PROCESS RIGHTS.	
.....	P4
REASON FOR GRANTING WRIT OF CERTIORARI.....	p10
CONCLUSION.....	p14
SIGNATURE.....	p14

APPENDIX (A) September 29, 2016 U.S DISTRICT COURT OF EASTERN MICHIGAN  
denying the Writ of Habeas Corpus and Certificate of Appealability. Cullens vs Curtin 2016 U.S District Lexis 134236

APPENDIX (B) MARCH 15, 2017 U.S DISTRICT COURT OF EASTERN MICHIGAN ORDER  
DENYING MOTION FOR CERTIFICATE OF APPEALABILITY NO#2-13-11835

APPENDIX (C) JULY 13, 2017 ORDER from U.S COURT OF APPEALS (6th Cir) NO#  
CULLENS vs CURTIN NO 16-2512

APPENDIX (D) October 17, 2017 U.S COURT OF APPEALS (6th Cir) order denying  
PETITION FOR REHEARING. CULLENS VS CURTIN 2017 U.S App Lexis  
20315

APPENDIX (E) SEPTEMBER 15 2011 ORDER FROM MICHIGAN COURT OF APPEALS DENYING MOTION TO FILE PRO SE PLEADING

APPENDIX (F) DECEMBER 28-2011 ORDER FROM MICHIGAN SUPREME COURT DENYING APPLICATION FOR LEAVE TO APPEAL SUPREME CT # 143900

APPENDIX(G ) KENNETH JONES vs COMMONWEALTH OF KENTUCKY 366 S.W.3d 376; 2011 Ky Lexis 133

APPENDIX (H) PEOPLE VS KERLEY 95 Mich App 74; \_\_\_\_ NW \_\_\_\_ (1980)

APPENDIX (I) PEOPLE VS GARFIELD 166 Mich App 66; 420 N.W 124 (1988)

APPENDIX (J) SELF DEFENSE STATUTE M.C.L 780.972

APPENDIX(K ) TRIAL TRANSCRIPT EXCERPT TT-1-09-09 pages 61-66

APPENDIX (L) U.S vs DIXON 548 U.S 1; 126 S.CT 2437; 165 L.Ed2d 299 (2006) in part pages 1,17,18,19 of 26

APPENDIX (M) MAY 4th 2011 Order from Michigan Court of Appeals denying Motion For Leave to File Pro Se Reply Brief.

APPENDIX (N) JULY 24-2012 UNPUBLISHED OPINION from Michigan Court of Appeals. People vs Cullens NO# 296492

APPENDIX (O) M.C.R 7.212 (G)

APPENDIX (P) DECEMBER 26-2012 Unpublish Order from Michigan Supreme Court Denying Application for Leave to Appeal Supreme CT# 145819

#### STATUTES

M.C.L 780.972 .....p4,6,10,11

#### RULE

M.C.R 7.212 (G).....p7,9,11

WRIT OF CERTIORARI

TABLE OF AUTHORITIES

Abela vs Martin 380 F.3d 915 (6th Cir 2004) .....	p12
Barker vs Yukins 199 F.3d 867 (6th Cir 1999) .....	p5
Ford vs Georgia 498 U.S 411 (1991) .....	p7,9
Harris vs Reed 489 U.S 255 (1989) .....	p8,12
Kenneth Jones vs Commonwealth of Kentucky, 366 S.W.3d 376; 2011 Ky Lexis 133.....	p5,6,10,11,12,13,14
People vs Garfield 166 Mich App 66; 420 NW 124 (1988) .....	p5,11,12
People vs Kerley 95 Mich App 74; <u>      </u> NW <u>      </u> (1980) .....	p5,11,12
Strickland vs Washington 466 U.S 668 (1984) .....	p7
U.S vs Dixon 548 U.S 1; 126 S.CT 2437 (2006) .....	p6,7,13
UNITED STATES vs OAKLAND CANNABIS BUYERS COOPERATIVE 532 U.S 483, 491; 121 S.CT 1711; 149 L.Ed.2d 722 (2001) .....	p6

STATUTES

M.C.L 780.972.....	p4,6,10,11
--------------------	------------

RULES

M.C.R 7.212 (G).....	p7,9,11
----------------------	---------

REFERENCES TO ORDERS AND OPINIONS BELOW

The July 13, 2017 order of the U.S Court of Appeals is an Unpublish order as Cullens vs Curtin No#16-2512. See Appendix (C) Habeas Corpus Denied.

The October 17, 2017 order of the U.S Court of Appeals denying a Petition for Rehearing is unpublis as Cullens vs Curtin No-16-2512. Appendix (D).

The September 29 2016 order and opinion of the U.S District Court is Unpublish as Cullens vs Curtin #2:13 C-V-11835. See Appendix (A)

The March 15, 2017 order of the U.S District Court is unpublis as Cullens va Curtin #2-13-C-V-11835. See Appendix (B)

The September 15, 2011 order of the Michigan Court of Appeals is unpublis as People vs Cullens # 296492 Sept-15-2011 order. See Appendix (E)

The December 28-2011 Michigan Supreme Court order denying the Application for Leave to Appeal is unpublis as People Vs Cullens Supreme CT #143-900. See Appendix (F).

The July 24-2012 Opinion of the Michigan Court of Appeals is unpublis as People vs Cullens MI Court of Appeals #296492. See Appendix (N)

The December 26-2012 Order from Michigan Supreme Court is unpublis as People vs Cullens Michigan Supreme Court #145819. See Appendix (P)...

## STATEMENT OF JURISDICTION

Petitioner seeks review of the July 13, 2017 order of the U.S COURT OF APPEAL (6TH CIR) denying his Certificate of Appealability. Cullens vs Curtin No#-16-2512. See Appendix (C).

On October 17, 2017, the U.S COURT OF APPEALS (6TH)(CIRCUIT) issued an order denying Cullens timely Petition For Rehearing to the July 13 2017 order from this same court. Cullens vs Curtin 2017 U.S App Lexis 20315. See Appendix (D).

On September 29, 2016 the U.S DISTRICT COURT OF EASTERN MICHIGAN denied Cullens Writ of Habeas Corpus and Certificate of Appealability to the C.O.A the U.S COURT OF APPEAL (6th Cir) denied. Cullens vs Curtin 2016 U.S District Lexis 134236. See Appendix (A).

On March 15, 2017 the U.S District Court Denied Cullens Motion for Certificate of Appealability but granted Motion to Proceed in Forma Pauperis. Cullens vs Curtin NO. 16-2512. See Appendix (B)

JURISDICTION IS INVOKED UNDER U.S.C § 1254(1)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional Statute involved is the Self Defense Statute of Michigan M.C.L § 780.972. (Appendix (J) )

§780.972. USE OF DEADLY FORCE BY INDIVIDUAL NOT ENGAGED IN COMMISSION OF CRIME: CONDITIONS.

Sec 2. (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

(b) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself of another individual.

(2) An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

## STATEMENT OF THE CASE

The Petitioner Gavin Cullens is a state inmate currently incarcerated in the Lakeland Correctional Facility in Coldwater, Michigan pursuant to a Jury Trial resulting in the conviction for 12 to 20 years for assault with intent to cause Great Bodily Harm. 2 years for felony firearms, 5 to 10 years for Felonious Assault and Felon In Possession.

The Petitioner Gavin Cullens conviction arises from a shooting that took place on Elmira Street in Detroit, Michigan. The shooting resulted in the death of Raphael Brooks and gun shot injuries to Anthony Baker and the Petitioner Gavin Cullens himself.

The Petitioner Gavin Cullens testified that on TT-1-08-09 p41-50 that he disarm a gun from A.Baker. That he only fire the gun he took from Baker in Self-Defense, after the person outside shot Cullens. That after Raphael Brook begin shooting at Cullens. Cullens testified TT-p42 that Raphael Brooks shot him two times in his back. Cullens never said he was the person who shot Baker.

On pg 44 Cullens was ask if he was able to determine who shot Baker and Cullens said "NO" because all his focus was on the person outside the apartment, who was shooting at Cullens from behind the Armour Guard Screen Door.

On TT-1-09-09 p61-61 (Appendix K-TT1-09-09 P61-65)the Trial Court read out the Jury Instruction and gave the Complainants Raphael Brooks and Anthony Baker Self-Defense Instruction as well as the Petitioner Gavin Cullens.

On TT-1-15-09 a jury found the Petitioner Gavin Cullens guilty of Assault with Intent to do Great Bodily Harm, Felonious Assault, Felon In Possession and Felony Firearm. The Jury was Deadlock on the charges of First Degree Mur-

der. However Cullens was acquitted of the First Degree Murder Charge in the following Retrial TT-3-08-10 p3.

The Petitioner file an appeal of right in the Michigan Court of Appeals. (See Appendix N July 24, 2012 unpubish opinion from the Michigan Court of Appeals). On August 29-2011, the Petitioner file this current issue under rule M.C.L 7.212 (G) (See Appendix O M.C.L 7.212 (G) Motion For Leave Rule), under a Motion For Leave to file a Motion For Peremptory Reversal and Motion For Remand. However when the Michigan Court of Appeals sought to denied any one of the motions, they fail to state that the Motion For Leave was DENIED.

There was no indication in the Michigan Court of Appeals order that any "LEAVE" was ever DENIED. (SEE Appendix E, September 15-2011 order from Michigan Court of Appeals).

Cullens file for an Application for Leave to Appeal the September 15, 2011 Michigan Court of Appeals order in the Michigan Supreme Court. The Michigan Supreme Court denied Cullens Application For Leave to Appeal the September 15-2011 order. (See Appendix (F) December 28-2011 Michigan Supreme Court Order).

Petitioner Cullens file a timely Habeas Corpus in the Eastern District Federal Court of Michigan raising this pending Claim. On September 29-2016 the Eastern District Court of Michigan denied this pending claim inside the Writ of Habeas Corpus and a Certificate of Appealability. (See Appendix (A) September 29, 2016 opinion and order denying his Writ of Habeas Corpus and a Certificate of Appealability).

Petitioner Cullens file a timely Motion For Certificate of Appealability

and a Motion to Proceed in Forma Pauperis in the Eastern District Federal Court of Michigan. On March 15-2017, the Eastern District Court of Michigan Denied Cullens Motion For a Certificate of Appealability but Granted Cullens Motion to Proceed in Forma Pauperis. (SEE Appendix (B), March 15-2017 opinion and order denying Cullens Motion For Certificate of Appealability and Granting the Motion to Proceed in Forma Pauperis).

The Petitioner Cullens file a timely Notice of Appeal in Motion For Certificate of Appealability in the U.S Court of Appeals (6th Circuit). On July 13, 2017 the U.S Court of Appeals (6th Circuit) Denied Cullens Certificate of Appealability. (See ~~unpublish Appendix (C) unpublish July 13, 2017 order denying Cullens Certificate of Appealability~~).

The Petitioner Cullens file a timely Petition for Rehearing, in the U.S Court of Appeals (6th Circuit). On October 17, 2017, the U.S Court of Appeals (6th Circuit) denied Cullens Petition for Rehearing. (See ~~Appendix (D) unpublish October 17-2017 order from U.S Court of Appeals denying the Petition For Rehearing~~).

Now Cullens files this timely Writ of Habeas/Certiorari in this U.S Supreme Court.

## ARGUMENT

THE TRIAL COURT ERRED WHEN IT GAVE OUT SELF DEFENSE INSTRUCTION FOR COMPLAINANTS WHO WERE NOT ACCUSED OF ANY CRIMES TO WARRANT A DEFENSE; ALTERNATIVELY TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT WHICH VIOLATED ACCUSE DUE PROCESS RIGHTS.

On TT-1-09-09 p61-65 (See Appendix K TT-1-09-09 p61-65) the Trial Court gave the complainants Self Defense instructions, which violated Cullens 5th, 6th and 14th amendment rights.

Cullens 5th, 6th and 14th amendment rights were violated because the Self Defense instructions the trial court gave the complainants negated Cullens Self Defense in the following manner.

On TT-1-09-09 pg61-65 (See Appendix K TT-1-09-09 p61-65) after the Trial Court read out Self Defense instructions for Cullens. The Trial Court gave the following instructions (TT p63-64), "SO I NEED TO ADVISE YOU THAT THE DOCTRINE OF SELF DEFENSE I JUST READ EQUALLY APPLIES TO RAPHAEL BROOKS. SO LET ME JUST PUT THAT DEFENSE IN CONTEXT WITH RAPHAEL BROOKS ACTIONS.

This error was egregious to Cullens Self Defense Because under the Michigan Statute of Self Defense M.C.L 780.972 (SEE Appendix J M.C.L 780.972 Self Defense Statute of Michigan). The statute of Michigan Self Defense does not require any part of the self defense instruction to be applied to nobody esle but the person using the instruction, which was the Petitioner Gavin Cullens.

Therefore when the Trial Court told the jury (See Appendix K TT-1-09-09 pg63-64) "SO I NEED TO ADVISE YOU THAT THE DOCTRINE OF SELF DEFENSE I JUST READ EQUALLY APPLIES TO RAPHAEL BROOKS", The Trial Court added another element to Cullens Self Defense that the original Self-Defense Statute of Michigan M.C.L 780.972 (See Appendix J M.C.L 780.972) NEVER REQUIRE by LAW. See

Barker vs Yukins 199 F.3d 867 (6th Cir 1999).

Furthermore the September 15-2011 Michigan Court of Appeals Order denying this issue (SEE Appendix E September 15-2011 order from Michigan Court of Appeals) conflicts with several of Michigan's own case laws. (SEE APPENDIX H People vs Kerley 95 Mich App 74; NW (1980); Appendix (I) People vs Garfield 166 Mich App 66; 420 N.W 124 (1988).

In People vs Kerley Supra and People vs Garfield Supra the Michigan Court of Appeals stated: [ THE TEST OF WHETHER OR NOT A JURY INSTRUCTION ON SELF DEFENSE IS PROPER IS WHETHER THE LANGUAGE OF THE INSTRUCTION, WHEN READ AS A WHOLE, MAKES IT CLEAR THAT THE DEFENDANT'S CONDUCT IS TO BE JUDGED FROM THE CIRCUMSTANCES AS THEY APPEARED TO THE DEFENDANT, NOT AS THEY WOULD HAVE APPEARED TO A THIRD PARTY. ]

Under People vs Kerley Supra and People vs Garfield Supra, the Michigan Court of Appeals already declared self defense instructions must be judge by circumstances that appear to the Defendant Gavin Cullens and not the THIRD PARTY (Raphael Brooks or Anthony Baker). Under Kerley Supra and Garfield Supra, the complainant Raphael Brooks would be deem a "THIRD PARTY".

Therefore the September 15-2011 Michigan Court of Appeals order CONFLICTS with Michigans own case law in Kerley and Garfield Supra. (See Appendix(E) Michigan Court of Appeal order of September 15-2011 compare to Appendix (H people vs Kerley Supra and Appendix (I) People vs Garfield Supra.

Further the September 15-2011 Michigan Court of Appeals order (Appendix E) also CONFLICTS with the STATE OF KENTUCKY. SEE(appendix (G) KENNETH JONES VS

COMMONWEALTH OF KENTUCKY, 366 S.W3d 376; 2011 KY Lexis 133)

The Kentucky Supreme Court declare there Self Defense Instructions was not intended to apply to the victim's conduct, but only to appellant's conduct relative to his claim of self-defense. The Supreme Court of Kentucky also stated there amendments do not apply on behalf of the victim of the crime, who is not subject to criminal prosecution.

THE KENTUCKY SUPREME COURT also stated THE CARDINAL RULE OF STATUTORY CONSTRUCTION IS TO GIVE EFFECT TO THE INTENT OF THE LEGISLATURE. See UNITED STATES vs OAKLAND CANNABIS BUYERS' COOPERATIVE, 532 U.S 483, 491; 121 S.CT 1711; 149 L. Ed.2d 722 (2001) See ( SEE Appendix (G) KENNETH JONES vs COMMONWEALTH OF KENTUCKY, 366 S.W 3d 376; 2011 KY LEXIS 133).

Under U.S vs Dixon 548 U.S 1; 126 S.CT 2437 (2006) (See Appendix L U.S vs Dixon Supra in part pgs 17,18 of 26), the Michigan Courts are to give effect to the intent of the Michigan Legislation for Self- Defense, the way the Michigan legislation intended for the Self Defense Statute of M.C.L 780.972 (Appendix J) to be.

Under M.C.L 780.972, the statute itself does not require that it be applied from the defendant to the complainant. M.C.L 780.972 also does not require any one esle but the person using said defense to use it.

Therefore the Trial Court on TT-1-09-09 p63-64 (Appendix (K)) was in error when it told the Jury Cullens defense Equally applies to the complainants because according to the Michigan Self Defense Statute. Cullens Self Defense only equally applies to Cullens and no one esle.

Under U.S vs Dixon Supra (See Appendix (L) Dixon Supra) the Dixon Court stated it is up to the federal courts to effectuate the affirmative defense as Congress may have contemplated it in an offense Specific Context. See (Appendix (L) U.S vs Dixon 548 U.S 1; 126 S.CT 2437 (2006) in part pg 1, 17 18, 19 of 26).

The Trial Court in the Petitioner Cullens case did not have any legislative authority to effectuate an affirmative Self defense for the complainants the way the Michigan Congress may have contemplated because the complainants were not charge with any offense specific crimes the way the Dixon Court prescribes a defense to be use.

Under Strickland vs Washington 466 U.S 668 (1984), Trial Counsel was ineffective in failing to object to this Trial Court Error, which prejudice Cullens defense for every reason within this Writ of Certiorari.

Under Ford vs Georgia 498 U.S 411 (1991) the September 15-2011 Michigan Court of Appeals order denying this issue (Appendix (E)), is not and never has been the Firmly Establish way to deny a MOTION FOR LEAVE under rule 7.212 (G). See Appendix (O) M.C.L 7.212 (G))

The U.S District Court of Eastern Michigan seems to believe Cullens abandon this issue. See (Appendix (A) September 29th, 2017 opinion and order denying Cullens Writ of Habeas Corpus and a Certificate of Appealability).

However Cullens properly file this issue by way of a proper Motion for Leave under rule M.C.L 7.212 (G). (See Appendix (O) M.C.L 7.212 (G)) When Cullens file his Motion For Leave under rule 7.212 (G), the Michigan Court of

appeals never properly denied Cullens Motion For Leave under its Firmly Establish way to deny any (LEAVE). (SEE APPENDIX (E) September 15-2011 Michigan Court of Appeals Order denying this pending Claim)

Inside the September 15 2011 order (Appendix (E) Mich Court of Appeals Order), the Michigan Court of Appeals never denied any Leave. The Firmly Establish rule to deny a "MOTION FOR LEAVE" inside any order is to say "THE MOTION FOR LEAVE IS DENIED". (See Appendix (M) May 4th 2011 order from the Michigan Court of Appeals denying a "MOTION FOR LEAVE").

This May 4th, 2011 Order (Appendix M order of May 4-2011) is the proper way to deny a "MOTION FOR LEAVE" because the May 4th 2011 order (Appendix M) properly states "THE MOTION FOR LEAVE TO FILE A PRO SE REPLY BRIEF IS DENIED".

Since the September 15, 2011 order (Appendix (E) 9-15-11 of Mich Court of Appeals) does not state anything about the "MOTION FOR LEAVE" being denied at all, which means the Michigan Court of Appeals never clearly and expressly denied any kind of [LEAVE] in the Appendix E- September 15-2011 Michigan Court of Appeals Order.

Under "Harris vs Reed 489 U.S 255 (1989)"; a procedural default does not bar consideration of a federal claim, unless the last state court rendering a judgment in the case "CLEARLY and EXPRESSLY state that its judgment rest on a State Procedural Bar.

Since the September 15, 2011 order of the Michigan Court of Appeals (Appendix (E) order denying this Claim from Mich CT of Appeals) does not Clearly and Expressly state that "\*THE MOTION FOR LEAVE TO FILE PRO SE PLEADINGS IS DENIED" means the Michigan Court of Appeals never Clearly denied any Leave at all.

The May 4th, 2011 Michigan Court of Appeals Order (Appendix (M)) is the firmly establish way to deny a "MOTION FOR LEAVE" in Michigan, simply because the May 4th-2011 order (Appendix (M)) actually states the words "The Motion For Leave" is denied unlike the Sept 15-2011 Order (Appendix (E)), which does NOT state those words inside its sentence.

Under Ford vs Georgia Supra, the September 15-2011 order (Appendix (E)) is not the Firmly Establish way to deny any "MOTION FOR LEAVE" since the U.S Supreme Court case law of Harris vs Reed Supra already rule that the last court to render judgment must clearly and expressly state its judgment rest on a procedural bar.

Furthermore Cullens file 3 different Motions that had to be answer by the Michigan Court of Appeals. Cullens file a "MOTION FOR LEAVE" under rule 7.212 (G). Cullens also file a Motion For Peremptory Reversal and Motion To Remand.

Therefore the September 15, 2011 order (Appendix (E)) does not make it CLEAR which Motion it is talking bout it denied inside the Sept 15-2011 order from the Michigan Court of Appeals since Cullens File Several Motions with the "Motion for Leave". The Michigan Court of Appeals never specified whether it was denying the "MOTION FOR LEAVE" OR THE other Motions cause its not Clear.

## REASON FOR GRANTING WRIT OF CERTIORARI

The Petitioner Cullens knows and accepts the fact that the U.S Supreme Court grants less than 1% of Writs of Certiorari and does not wish to waste the courts time. However under the CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI OF RULE 10 (A) (B) AND (C). The decisions of the State of Michigan (APPENDIX (E) (F)), the U.S District Court of Eastern Michigan (Appendix (A)) and the U.S Court of Appeals (6TH Circuit) (Appendix (C)) are in total Conflict with the Decision from the State Of KENTUCKY SUPREME COURT. (Appendix (G) Jones vs Commonwealth of Kentucky 366 S.W.3d 376; 2011 Ky Lexis 133)

The conflict stems from giving Criminal Defendants New Trials when the Courts give the Jury Self Defense Instructions on behalf of the victims conduct. (See Appendix (G) Jones vs Commonwealth of Kentucky 366 S.W.3d 376; 2011 Ky Lexis 133).

In Cullens case the court not only gave the complainants Self-Defense instructions (SEE Appendix (K) TT-1-09-09p61-66) but also told the Jury "THAT THE DOCTRINE OF SELF DEFENSE THE COURT JUST READ EQUIALLY APPLIES TO THE VICTIMS CONDUCT RAPHAEL BROOKS). See Appendix (K) TT p63,63).

This instruction was overwhelming and prejudice against Cullens because the only Doctrine of Self Defense the Court just read to the Jury was Cullens Self Defense, which does not have any requirements under Michigan Law to apply to no one esle but Cullens himself. (See Appendix (J) Self Defense Statute M.C.L 780.972).

Cullens contends he never received his original Self Defense instruction because the Defense that was given out by the court itself require that it be Equally Applied to the Victims conduct which is not a "REQUIREMENT" under Appendix J M.C.L 780.972 Self Defense Statute.

Furthermore there are several Michigan cases that state( Self Defense must be judge by the conduct of the Defendant and not by a third party. See Appendix (H) People vs Kerley 95 Mich App 74; nw (1980); Appendix (I) People vs Garfield; 166 Mich App 66; 420 NW 124 (1988).

These are controlling cases from Michigan Courts that somewhat agree with Kentucky Supreme Court that Self-Defense Instructions only applies to a Defendant conduct and NOT to the victim conduct which is not subjected to any criminal prosecution. (SEE Appendix (G) Commonwealth of Kentucky vs Kenneth Jones Supra.)

However when Cullens ask for [LEAVE] under Rule M.C.L 7.212 (G) (Appendix (O)) and made the Michigan Court aware of this problem. The Michigan Courts denied Cullens in an Unpublish Order under rule 7.211 (E) (2), which was not the firmly establish rule to deny this issue Cullens brought to the Courts, attention. The September 15-2011 order does not state no where inside the order that any LEAVE was denied. (See Appendix E, September 15, 2011 Michigan Court of Appeals Order which never stated "THE MOTION FOR LEAVE TO FILE PRO SE PLEADING IS DENIED".)

The firmly stated establish way to deny a "MOTION FOR LEAVE" is by stating so. (See Appendix (M) May 4th 2011 order from MI Court of Appeals which Firmly establish that LEAVE is DENIED. However the Sept 15-2011 Order (Appen-

dix (E) never express at all that any LEAVE is denied. Under Abela vs Martin 380 F.3d 915 (6th Cir 2004), a court must hot slur its words but must enunciate more clearly. Also see Harris vs Reed 489 U.S 255 (1989) Clearly and Expressly RULE under the U.S Supreme Court Precedent.

All other courts that follow the Sept- 15-2011 order relied on the same ruling or similiar resolution. See Appendix (F) Michigan Supreme Court Order of Dec 28th-2011. See Appendix (A) U.S District Court of Eastern Michigan Sept 29th-2016 Order and Opinion. See Appendix (C), U.S Court of Appeals 6th Circuit Order and Opinion from July 13-2017. See Appendix (D) U.S Court of Appeals (6th Circuit) order and opinion from October 17-2017.

Therefore Petitioner Cullens ask this U.S Supreme Court to settle this dispute between the State of Kentucky and the State of Michigan, the U.S District Court of Eastern Michigan and the U.S Court of Appeals (6th Circuit).

Under Kentucky Law Cullens would have received a New Trial. (See Appendix (G) Kenneth Jones vs Commonwealth of Kentucky Supra).

Under Michigan Law according to Appendix (H) People vs Kerley 95 Mich App 74; NW (1980); Appendix (I) People vs Garfield 166 Mich App 66; 420 NW 124 (1988). Self defense must be judge by the conduct of the Defendant and not a third party. This Michigan Case Law helps Cullens Argument do to the fact that the complainant would be consider a third party, and unable to receive Self Defense Instructions.

However Michigan did not rely on its own case law or the Kentucky Law. Michigan denied Cullens issues in an unpublish order. Then the U.S District

Court of Eastern Michigan denied Cullens Writ of Habeas Corpus and request for a Certificate of Appealability.

The Michigan Courts are in total Conflict under the "RULES AND CONSIDERATIONS GOVERNING REVIEW OF CERTIORARI. UNDER RULE 10 (A), the U.S Court of Appeals (6th Circuit) (See Appendix (C) 7-13-2017 order from U.S COURT OF APPEALS (6th Cir)) has a decision which conflicts WITH the State of Kentucky (SEE APPENDIX (G) Kenneth Jones vs Commonwealth of Kentucky Supra).

Under RULE 10 (B) the decision of the State of Michigan, (appendix (E) (F) Sept-15 2011 order from MI Court of Appeals and Dec 28th 2011 order from MI Supreme Court), the U.S District Court of Eastern Michigan (See Appendix (A) Sept 24-2016 order from Eastern District Court of MI), and the U.S Court of Appeals (6th Cir) (See Appendix (C) U.S Court of Appeals (6th Cir) order) has all RENDER OPINIONS base on this FEDERAL QUESTION which conflicts with the Decision of the Kentucky Supreme Court. (SEE Appendix (G) Jones Supra)

Under Rule 10 (C) the Michigan Courts (See Appendix (E)(F), the U.S District Court of Eastern Michigan (See Appendix (A)) and the U.S Court of Appeals (6th Cir) (See Appendix (C)) is in total conflict with this U.S Supreme Court decision in U.S vs Dixon Supra (See Appendix (L) U.S vs Dixon Supra) base on this issue. The U.S Supreme Court stated in Dixon Supra that it is up to the federal courts to effectuate an Affirmative Defense the way Congress may have contemplated it in an offense Specific Context.

The Trial Court in Cullens case (SEE Appendix (K) TT-1-09-09p61-65) violated the decision of Dixon because the Trial Court was unable to ef-

fectuate an affirmative Defense for the complainant/victims the way the Michigan Congress may have contemplated to an Offense Specific context. When you consider the fact that the Complainant/victims were not charge with any offense specific crimes to warrant any affirmative defense.

Under Rule (c) the Kentucky Supreme Court (See Appendix G Kenneth Jones vs Commonwealth of Kentucky Supra) has already decided this important issue, which granted Kenneth Jones a New Trial. However any criminal defendant receiving new trials base on the Trial Court giving affirmative defenses to Complainants/victims should be settle by this U.S Supreme Court.

The National Importance of this issue would resolve the conflict between the Kentucky Supreme Court (See Appendix (G) Kenneth Jones vs Commonwealth of Kentucky Supra) and the Trial Court of Michigan (See TT-1-09-09 p61-65) for good. It also would resolve the conflict of why complainants/victims are or are not allow to receive defense instructions during Criminal Trials and prosecutions

#### CONCLUSION

CULLENS RESPECTFULLY ASK THIS COURT TO GRANT THE PETITION FOR A WRIT OF CERTIORARI\*.

Respectfully Submitted

Date January 12-2018

/s/ Gavin Cullens  
GAVIN CULLENS # 270393  
Lakeland Correctional Facility  
141 First St  
Coldwater, MI 49069