

No. \_\_\_\_\_

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

MICHAEL ANTHONY GARRETT,  
Petitioner,

v.

UNITED STATES,  
Respondent.

---

On Petition for a Writ of Certiorari  
To the United States Court of Appeals for the Eighth Circuit

---

**PETITION FOR A WRIT OF CERTIORARI**

---

**LAINE CARDARELLA**  
Federal Public Defender  
Western District of Missouri

Stephen C. Moss  
Appellate Unit Chief  
818 Grand, Suite 300  
Kansas City, Missouri 64106  
Tel: (816) 471-8282  
steve\_moss@fd.org

---

## **QUESTION PRESENTED**

I. Whether a defendant's constitutional right to present a defense as guaranteed by the Fifth and Sixth Amendments to the United States Constitution encompasses the right to have the jury instructed on a theory of defense that constitutes a correct statement of the law and supported by evidence adduced at trial.

## **TABLE OF CONTENTS**

Question Presented.....	i
I. Whether a defendant's constitutional right to present a defense as guaranteed by the Fifth and Sixth Amendments to the United States Constitution encompasses the right to have the jury instructed on a theory of defense that constitutes a correct statement of the law and supported by evidence adduced at trial.....	i
Table of Contents.....	ii
Index to Appendix.....	ii
Table of Authorities .....	iii
Petition for Writ of Certiorari .....	1
Opinion Below.....	1
Jurisdiction .....	1
Constitutional Provision Invoked .....	1
Statement of the Case .....	2
Reason for Granting the Writ .....	4
Conclusion and Prayer for Relief .....	6
Appendix .....	6

## **INDEX TO APPENDIX**

Appendix A - Judgment of the Eighth Circuit Court of Appeals

Appendix B – Order Denying Rehearing

## Table of Authorities

### Cases

<i>Bradley v. Duncan</i> , 315 F.3d 1091 (9th Cir. 2002) .....	5-6
<i>California v. Trombetta</i> , 467 U.S. 479 (1984) .....	5
<i>Crane v. Kentucky</i> , 476 U.S. 683 (1985) .....	5
<i>Jackson v. Mullin</i> , 46 Fed. Appx. 605 (10th Cir. 2002) .....	5
<i>Mathews v. United States</i> , 485 U.S. 58 (1988) .....	4, 5
<i>Taylor v. Illinois</i> , 484 U.S. 400 (1988) .....	5
<i>Tyson v. Trigg</i> , 50 F.3d 436 (7th Cir. 1995) .....	5
<i>United States v. Christy</i> , 647 F.3d 768 (8th Cir. 2011) .....	3, 4, 5
<i>United States v. Garrett</i> , 898 F.3d 811 (8th Cir. 2018) .....	1, 2, 4

### Statutes

28 U.S.C. § 1254 .....	1
28 U.S.C. § 2253 .....	1

### Rules

Sup.Ct. Rule 13.3 .....	1
Sup. Ct. Rule 13.5 .....	1

## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Michael Anthony Garrett respectfully requests this Court to issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 2, 2018.

### **OPINION BELOW**

The Eighth Circuit's judgment affirming Mr. Garrett's conviction and sentence is reported at *United States v. Garrett*, 898 F.3d 811 (8th Cir. 2018), and is included in Appendix A. A copy of the order denying rehearing is included in Appendix B.

### **JURISDICTION**

On August 2, 2018, the Court of Appeals affirmed Mr. Garrett's appeal from his conviction and sentence, and subsequently denied the timely petition for rehearing on October 9, 2018. In accordance with Supreme Court Rule 13.3, this Petition for Writ of Certiorari is filed within ninety days of the date on which the Court of Appeals entered its final order. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254, 28 U.S.C. § 2253 and Sup. Ct. R. 13.3 and 13.5.

### **CONSTITUTIONAL PROVISION INVOKED**

U.S. Const. amend. V.

U.S. Const. amend. VI.

## STATEMENT OF THE CASE

### District Court Proceedings

Following a jury trial, Mr. Garrett was convicted on a three-count indictment that charged him with being a felon in possession of a firearm, possession with intent to distribute marijuana, and possession of a firearm in furtherance of a drug-trafficking crime. *United States v. Garrett*, 898 F.3d 811, 813 (8th Cir. 2018). Mr. Garrett relied on a voluntary intoxication defense to refute the specific intent element required by counts two and three. The court refused to instruct the jury on Mr. Garrett's theory of defense.

Shortly after midnight on December 28, 2014, police officers located an unconscious Mr. Garrett in a minivan parked by a gas pump of Grand Slam convenience store. *Id.* Eventually, police extricated a “dazed and confused” Mr. Garrett from the driver seat, who then collapsed to the ground. *Id.* Mr. Garrett appeared intoxicated, and continued to drift in and out of consciousness following his arrest. *Id.* At the time of his arrest, Mr. Garrett had current prescriptions for OxyCodone, Xanax, and Codeine. Following his transportation to a detention center, medical personnel located a burn on Mr. Garrett’s thigh, which corresponded to hole found on his pants leg and a burn in the minivan seat where he was located. *Id.* at 813-814.

Mr. Garrett requested the court to provide the following theory-of-defense instruction to the jury:

One of the issues in this case is whether the defendant was intoxicated due to taking a drug or drugs at the time the acts charged in the Indictment were committed. Being under the influence of a drug, even one taken for medical purposes, provides a legal excuse for the commission of a crime if the effect of the drug negates the mental state required by the charged offense. Evidence that the defendant acted while under the influence of drugs may be considered by you, together with all the other evidence, in determining whether or not he did in fact have an intent to distribute marijuana and an intent to possess a firearm in furtherance of possession of marijuana with intent to distribute. *Id.* at 814.

The court refused to give the instruction because “a reasonable person would not conclude that the evidence supports the defendant’s position so as to warrant the giving of the intoxication instruction. *Id.* at 814.

The jury convicted Mr. Garrett.

#### Appeal to the Eighth Circuit

On appeal before the Eighth Circuit, the court affirmed the district court’s refusal to provide the theory-of-defense instruction on three bases. First, the court held that the instruction did not accurately state the law because it did not acknowledge that Mr. Garrett may have maintained the requisite *mens rea* elements of counts two and three prior to becoming intoxicated *Id.* at 815. The court ignored the fact that the requested instruction was taken verbatim from the Model Eighth Circuit Jury Instructions Manual. *Id.* Second, the court held that the evidence regarding Mr. Garrett’s intoxication was too speculative to warrant giving the instruction. Third, the court relied on *United States v. Christy*, 647 F.3d 768 (8th Cir. 2011), in holding that the instructions as a whole adequately afforded counsel to argue the defense theory to the jury. *Id.*

## REASONS FOR GRANTING THE WRIT

Review of the judgment of the Eighth Circuit Court of Appeals is warranted under Supreme Court Rule 10 for two reasons. First, review is warranted because the court in *Garrett* “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” *Id.* at 10(c). Second, review is warranted because the court in *Garrett* has “entered a decision in conflict with the decision of another United States court of appeals on the same important manner.” *Id.* at 10(a).

The judgment of the Eighth Circuit Court of Appeals has decided an important question of federal law in a way that significantly conflicts with this Court’s holding in *Mathews v. United States*, 485 U.S. 58 (1988). The Court in *Mathews* held that “as a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor.” *Id.* at 63.

The judgment affirmed the district court’s denial of the requested theory-of-defense instruction by relying on *United States v. Christy*, 647 F.3d 768, 770 (8th Cir. 2011), which holds that the right to have the jury instructed on a defendant’s theory of defense is not a constitutional issue. *Garrett*, 898 F.3d at 815. The court in *Christy* noted that the holding in *Mathews* was “not always well explained,” and that a defendant’s entitlement to such an instruction is “only a ‘general proposition.’” *Christy*, 647 F.3d at 770. The court in *Christy* further noted that *Mathews* was not grounded in the Constitution, but “apparently relied instead on a

supervisory power over federal criminal cases.” *Id.* at 770 (citing *Jackson v. Mullin*, 46 Fed. Appx. 605, 609 n. 1 (10th Cir. 2002)). *Christy* is contrary to *Mathews* as well as precedent from this Court that indicates that a defendant’s entitlement to a theory-of-defense instruction is a fundamental component of due process.

Whether rooted in the Due Process Clause, the Compulsory Process Clause, or the Confrontation Clause, the Constitution guarantees defendants “a meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1985) (citing *California v. Trombetta*, 467 U.S. 479, 485 (1984)). Due process requires that criminal prosecutions “comport with prevailing notions of fundamental fairness.” *Trombetta*, 467 at 485. The right to present a defense includes “the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies.” *Taylor v. Illinois*, 484 U.S. 400, 409 (1988). The Eighth Circuit’s holding that such a right is merely a “general proposition” violates this line of precedent, and should be reversed by this Court.

The Eighth Circuit’s holding in *Garrett* also conflicts with decisions of two other United States courts of appeals: the Sixth and Ninth Circuits. In *Tyson v. Trigg*, the Seventh Circuit held that the right to present a defense “would be empty if it did not entail the further right to an instruction that allowed the jury to consider” a defendant’s theory of defense. 50 F.3d 436, 448 (7th Cir. 1995). In *Bradley v. Duncan*, the Ninth Circuit held that a district court’s failure to provide the jury with a requested theory-of-defense instruction may violate a defendant’s

due process right to present a full defense. 315 F.3d 1091, 1099 (9th Cir. 2002). In contrast to these circuits, the Eighth Circuit has held that a defendant's right to require a court to provide a theory-of-defense instruction to the jury is not based on any constitutional provision, but instead is based on a federal court's inherent supervisory powers.

Because the issue in this case involves an important question of federal law for which there is a conflict between the circuit courts, the Court should grant Mr. Garrett's petition to address this important issue and to resolve the conflict between the circuit courts.

#### **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, Mr. Garrett respectfully requests that this Court grant his petition for certiorari.

Respectfully submitted,

/s/Stephen C. Moss  
STEPHEN C. MOSS  
Appellate Unit Chief  
Federal Public Defender's Office  
Western District of Missouri  
818 Grand, Suite 300  
Kansas City, Missouri 64106  
steve\_moss @fd.org

#### **APPENDIX**

Appendix A - Judgment of the Eighth Circuit Court of Appeals

Appendix B – Order denying Rehearing.