18-7935

NO. 18-1035

IN THE SUPREME COURT OF THE UNITED STATES

KAHRI SMITH, Petitioner,

vs.

BONITA HOFFNER, Respondent.

ORIGINAL

PETITION FOR WRIT OF CERTIORARI
On Appeal from the United States Court of Appeals for the Sixth Circuit

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STATEMENT OF QUESTIONS PRESENTED

I

IS CERTIORARI APPROPRIATE WHERE THE SIXTH CIRCUIT COURT OF APPEALS DECIDED THE MERITS OF PETITIONER'S SELF DEFENSE CLAIM WITHOUT JURISDICTION AND IS IT DEBATABLE AMONG REASONABLE JURISTS WHETHER THE COMMISSION OF A FELONY PRECLUDES A SELF DEFENSE INSTRUCTION UNDER MICHIGAN LAW?

PARTIES TO THE PROCEEDINGS

Petitioner, KAHRI SMITH, is an individual and has no corporate affiliations. Petitioner is proceeding in pro per with the aid of a Michigan Department of Corrections Legal Writer.

Respondent, Bonita Hoffner is the warden of Lakeland Correctional facility and is represented by the Michigan Attorney General's Office

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

IN THE SUPREME COURT OF THE UNITED STATES

No._____

KAHRI SMITH
PETITIONER,
v.
BONITA HOFFNER
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KAHRI SMITH, respectfully petitions for a Writ of Certiorari to review the final order of the Michigan Supreme Court in this case.

OPINIONS BELOW

On November 28, 2017, the United States District Court for the Eastern District had issued an opinion and order denying Mr. Smith's petition for a writ of habeas corpus and declining to issue a certificate of appealability. (Appendix B).

On May 25, 2018, the United States Court of Appeals for the Sixth Circuit issued an order denying Petitioner's request for a certificate of appealability. (Appendix A, pgs. 1-5).

STATEMENT OF JURISDICTION

Petitioner seeks review of the May 25, 2018, opinion of the Michigan Supreme Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS, AND COURT RULES INVOLVED

A. Constitutional Provision

> U.S. Const., Amend. XIV: "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."

B. Statutory Provisions

Mich. Comp. Laws, 780.971 provides:

> "Sec. 1: "This act shall be known and may be cited as the "self-defense act". 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 or of another individual. Sec 3: Except as provided in section 2, this act does not modify the common law of this state in existence on October 1, 2006 regarding the duty to retreat before using deadly force or force other than deadly force. Sec 4: This act does not diminish an individual's right to use deadly force or force other than deadly force in self-defense or defense of another individual as provided by the common law of this state in existence on October 1, 2006."

STATEMENT OF THE CASE

Petitioner Mr. Smith was convicted in state court of second-degree murder **Mich. Comp. Laws 750.317.** The convictions arose from the beating death of Mr. Smith's uncle on August 4, 2010. Mr. Smith asserts that he had a torn ligament in his leg and could not have attempted to kick in his uncle's door but was given access to the house and a subsequent fight had caused damage to the window and the door. Mr. Smith attempted to rely upon a claim of self-defense but this request was denied since it was alleged that Mr. Smith was committing a felony at the time of the beating death of his uncle. It is noteworthy that Mr. Smith was not convicted of any crime but second-degree murder.

Petitioner respectfully submits that the testimony pertaining to Eric Smith not wanting the Petitioner in his house and Petitioner kicking in a door in order to enter Eric Smith's home is contradictory in nature. (Trial Trans. Vol. II pgs. 36-37). Edith Smith testified that "Eric wasn't inside the house." The trial court, realizing the significance of that statement interjected, "she just said he was outside." *Id.* It is the Petitioner's position that the broken window that was blamed on him at trial was actually broken long before this incident and that Edith and Irving fabricated testimony against him in efforts to secure a tainted conviction.

Irving and Edith Smith's testimony is conflicting as one witness testified that Petitioner kicked the door in to gain entry into Eric's house and the other testified that Petitioner kicked the window in. (Preliminary Exam [PE] pgs. 25-26 & Trial Trans. [TT] Vol II p 63- to TT Vol. II, p 35). Irving testified that the window was broken after the door was kicked in, but this testimony is belied by common sense. Why would someone break a window to get in after they kicked the door?

The inconsistencies concerning the alleged break in deprived Petitioner of a valid defense

to the charges. The jury concluded that Mr. Smith's beating of his uncle did establish all of the elements of second-degree murder and returned a verdict of guilty. Mr. Smith was sentenced to 20-40 years imprisonment. After exhausting his direct appeals Mr. Smith sought habeas relief in the United States District Court, Eastern District of Michigan, Southern Division, presenting a single claim for relief:

REASONS FOR GRANTING THE WRIT

> CERTIORARI IS APPROPRIATE BECAUSE THE SIXTH CIRCUIT COURT OF APPEALS DECIDED THE MERITS OF PETITIONER'S SELF DEFENSE CLAIM WITHOUT JURISDICTION AND IT IS DEBATABLE AMONG JURISTS WHETHER THE COMMISSION OF A FELONY PRECLUDES A SELF DEFENSE INSTRUCTION UNDER MICHIGAN LAW

ANALYSIS

If the district court denied relief to the petitioner, an appeal cannot proceed until the district court or the Sixth Circuit grants a COA. This requirement is set forth in **28 U.S.C. § 2253(c)** which provides in pertinent part:

> "(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court . . . .
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right ..."

In *Miller-El v. Cockrell*, 537 U.S. 322 (2003), the court held that in deciding whether to grant a COA, "[t]he Court of Appeals should limit its examination to a threshold inquiry into the underlying merit of petitioner's claims rather than ruling on the merit of the prisoner's claims..." *Id.* 537 US at 327, citing *Slack v. McDaniel,* 529 U.S. 473, 481, 146 L. Ed. 2d. 542, 120 S. Ct.

1595 (2000).A COA will issue only if the requirements of **§2253** have been satisfied. *Id.* 537 U.S. at 336. The Court further elaborated: "Under the controlling standard, a petitioner must show that reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further." *Id.* citation omitted.

In seeking a COA the petitioner need not demonstrate that his/her appeal will succeed. *Miller-El*, supra, 537 U.S. at 337.

The Sixth Circuit issued a four page opinion which went beyond a cursory review of the merits and concluded that:

> The evidence at trial did not support this defense. Rather, undisputed evidence established that Eric locked Smith out of his house; Smith kicked in a window and a door of Eric's house in order to gain entry; Eric called his mother and his son asking for help when Smith broke into his home; there was no evidence that Eric had a weapon or threatened Smith; Smith weighed approximately seventy-five pounds more than Eric; and Eric had defensive injuries on his wrists and was found unconscious near a side door of his home. *Smith* 2013 WL 66708997, at *1-2. Given that the testimony from Smith's grandmother did not contradict this evidence and, in fact, refuted the allegation that Eric was the aggressive, there is no indication that any further testimony on her part would have been sufficient for Smith to assert a self-defense claim. Reasonable jurists would not therefore debate that Smith's right to present a defense was not infringed by any limitation on his grandmother's testimony.

Although the Sixth Circuit used the magic words "reasonable jurists would not therefore debate..." it essentially concluded that Petitioner could not establish self-defense. See May 25, 2018, Order pgs. 3-4. Petitioner asserts that this was a clear legal error.

In an analogous case where the defendant was mentally ill, the Court concluded that evidence revealing what kind of man the decedent was would be highly relevant to corroborate the defense theory and help the jury to determine whether appellant's story was truthful, and

would therefore serve the interests of justice. See *Evans v United States,* 277 F2d 354; 107 App DC 324 (1959), the defendant claimed she killed the deceased, a stranger, in defending herself from sexual attack. Her conviction for second-degree murder was reversed because of the trial court's rejection of proffered testimony by the deceased's wife that the deceased was ill mentally, not insane a lost soul who wanted to be with people, get along with the rest, and did not know how to do it; that at times, that he would like to drink and at times of drinking and otherwise he would even go to the extent of being psychotic, perhaps, and with her at least she would know -- acted belligerent and in a really bellicose type of manner. *Id.* at 355.

In *Barnes v Commonwealth*, 214 Va 24; 197 SE2d 189 (1973), the defendant claimed he acted in self-defense in killing an intoxicated man who attacked him. The Virginia Supreme Court held it was reversible error to exclude testimony of the decedent's ex-wife that five years earlier, the decedent showed aggressive tendencies when intoxicated; as well as other testimony to show that shortly before the decedent's death, he had been hospitalized for excessive drinking. This was properly admissible, with no requirement that it be known to the defendant, because if admitted, the jury might have found the defendant's version of events more credible.

In *State v Griffin*, 19 Ore App 822; 529 P2d 399, 404-405 (1974), the Court held it was reversible error to exclude proffered testimony of a bouncer that the deceased would "flip out" and get into fights when intoxicated, despite the prosecutor's "specific act" objection. The Court held that the proffered evidence was erroneously excluded, since it was evidence of the character of the deceased for turbulence when intoxicated. Reversal was required, because the jury "may have been more inclined to believe defendant's version of the events . . . including his claim that [the deceased] initiated an unprovoked attack," had it heard the excluded testimony.

These cases support Petitioner's position that evidence of the deceased's past pattern of violence was admissible as character evidence. The purpose of the testimony was two-fold: to show that the decedent was the aggressor, and to establish Petitioner's reasonable apprehension of harm to himself by the decedent. When the evidence is used to establish reasonable apprehension of harm, character or a character trait is made an essential element of the claim of self-defense. See *People v. Harris,* 458 Mich. 310, 318-319 (1998). Therefore, reasonable jurists could disagree regarding whether Petitioner was denied his fundamental constitutional right to present a defense.

Michigan Laws Governing Claims of Self-Defense

At the time of Mr. Smith's trial, Michigan law recognized the "stand-your-ground" defense which applies where the accused reasonably believes that his/her life is in imminent danger. See e.g. **Mich. Comp. Laws, 780.971**, *effective October 1, 2006, created the right to stand one's ground and not retreat in circumstances in which duty to retreat existed at common law.*

The Act provides:

> Sec. 1: "This act shall be known and may be cited as the "self-defense act". 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 or of another individual. Sec 3: Except as provided in section 2, this act does not modify the common law of this state in existence on October 1, 2006 regarding the duty to retreat before using deadly force or force other than deadly force. Sec 4: This act does not diminish an individual's

> right to use deadly force or force other than deadly force in self-defense or defense of another individual as provided by the common law of this state in existence on October 1, 2006."

Despite the statutory language precluding a claim of self-defense during the commission of a crime, the Michigan Supreme Court has not construed the self-defense statute **Mich. Comp. Laws 780.971** to impose a categorical ban on claims of self-defense every time the accused is alleged to have killed during the commission of a felony.

For example in *People v. Dupree*, 486 Mich. 693, 697 (2010), the court held that the claim of common law self-defense is generally available for a felon-in-possession charge. The court reasoned in *Dupree*, that the common law claim of self-defense was available to a defendant in a felon in possesion of a firearm prosecution. The court concluded that absent some clear indication that the legislature abrogated or modified the common law, we presume the defense of self-defense was available to defendant if supported by the evidence.

In *People v.Triplett*, 499 Mich. 52, 57 (2016) , the court found that it was error for the trial court to deprive the defendant of the right to present the affirmative defense of self-defense during his trial on charges of domestic violence, carrying a concealed weapon and felonious assault. See also *People v Goree*, 296 Mich. App. 293, 302, 305 (2012), holding that the defendant had a right to assert the affirmative defense of self-defense in his trial for charges of assault and felony firearm. Mr. Smith respectfully submits that the state court's application of federal law was contrary to clearly established United States Supreme Court law. The denial of the right to present a defense based solely upon the fact that Mr. Smith may have been committing another felony at the time of the beating death of his uncle is inconsistent with due process.

Federal Laws Governing The Right To Present A Defense

Clearly established federal law entitles a defendant the right to present a defense. See e.g., *Chambers v. Mississippi*, 410 U.S. 284 (1973), *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). This includes the right to a jury instruction on inconsistent defenses so long as there is sufficient evidence to support a verdict based upon the requested instruction. See e.g., *Matthews v United States*, 485 U.S. 58, 63 (1988), ("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." Citing *Stevenson v United States*, 162 U.S. 313 (1896), which reversed a murder conviction arising out of a gunfight in the Indian Territory. The principle holding of the Court was that the evidence was sufficient to entitle the defendant to a manslaughter instruction and to have the jury instructed on self-defense. Id. pgs. 63-64).

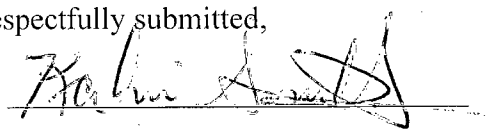
Thus, Mr. Smith asserts that he has demonstrated that reasonable jurists can debate as to whether a defendant should be categorically denied the right to assert the affirmative defense of self-defense solely because he or she may have been committing a felony at the time of the death in issue. Here, Mr. Smith was not convicted of any other felonies and thus, he should have been allowed to assert self-defense in his second-degree murder case. The deprivation of the right to

present a defense is a deprivation of a fundamental constitutional right. The district court abused its discretion in denying a COA under the facts of this case.

WHEREFORE, Petitioner prays that this Honorable Court grant his petition for a writ of certiorari for the reasons stated herein.

Date: July 12, 2018

Respectfully submitted,



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NOTICE

This document was prepared with the assistance of a non-attorney inmate with the Michigan Department of Corrections Legal Writer Program.