

No. 19-5716

1918-

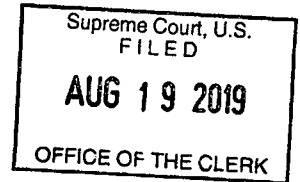
ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

pro se

Karl Heinz Dupuy — PETITIONER  
(Your Name)



vs.

Niemeyer et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals 4<sup>th</sup> Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Karl Dupuy #1869604  
(Your Name)

901 corrections way  
(Address)

Jaratt, VA 23870  
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Stoneman v. Commonwealth 66 Va (25 Gratt.) 877 (1874)  
Green v. Commonwealth 122 Va. 862, 94 S.E. 940 (1918)  
was the life of my Pregnant companion & Fetus not worth being protected from imminent danger from real threat by two young men with burglary & Abduction tools in their possession? — § 18.2-94
- 2) Do the Circumstances of my situation such as the deceit, deception & connivance of the Young men in conjunction with my alement, at the time not constitute my subjection to duress?  
Sam v. Commonwealth 13 Va. App. 312, 411 S.E. 2d 832 (1991) ?
- 3) How can I prove my Actual innocence, Schlup v. Delo 513, U.S.-298 (1995) without obtaining requested discovery without undue hardship, (my incarceration) in which the facts of medical records and court transcripts will entitle me to relief; see Walker v. Mitchell 299 S.E. 2d 698, 699 (Va. 1983); Fitzgerald v. Bell 366 S.E. 2d 615, 618 (Va. App. 1988) ?
- 4) would not the expert opinion of my state of mind at time of "offense" determine whether there was intent involved? Epperly v. Commonwealth, 224 Va. 214, 294 S.E. 2d 882 (1982)

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

☒ 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:

Liam O'Grady, District Judge

Niemeyer -

AGee - Circuit Judges

Richardson -

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	Decision of Court of Appeals for the fourth circuit
APPENDIX B	Decision of U.S. District Court for the Eastern District of Virginia
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

# TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Stoneman v. Commonwealth 66 Va. (25 Gratt) 877 (1874)	8
Green v. Commonwealth 122 Va. 862.94 S.E. 940 (1918)	8
Sam v. Commonwealth 13 Va. App. 312, 411 S.E.2d 832 (1991)	8
Schlup v. Delo 513, U.S.-298 (1995)	8
walker v. Mitchell 299 S.E.2d 698, 699 (Va. 1983)	8
Fitzgerald v. Bass 366 S.E.2d 615, 618 (Va. 1988)	8
Epperly v. Commonwealth 224 Va. 214, 294 S.E.2d 882 (1982)	8
McKinney v. Commonwealth, NO-1202-07-3, 2008 Va. App. 1exis 344 (ct of appeals July 8, 2008)	13
State v. Kylo 766 Wash.2d 856, 215 P.3d 177 (2009)	13
People v. Wright 35 Cal. 4th 964, 111 P3d 973, 28 Cal. Rptr.3d 708 (2005)	13
Skylton v. Commonwealth 185 Va. 357, 38 S.E.2d 479 (1946)	13
Grant v. Commonwealth 223, Va. 680, 292 S.E.2d 348 (1982)	13
STATUTES AND RULES	
§ 18.2-94	8
§ 3.04(2)(b)	13
§ 19.2-304	13
§ 53-272	13
§§ 18.2-22	14
§§ 18.2-94	14
§§ 18.2-48	14

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at June 25 2019; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☒ reported at 13<sup>th</sup>, November 2018; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Similar to *McKinney v. Commonwealth*, No. 1202-07-3, 2008 Va. App. Lexis 344 (Ct of appeals July 8, 2008) Transcript of my trial will provide ample evidence from which a jury could have reasonably found that my accuser were Principal in violation of Abduction §§ 18.2-48, (among many other attempted Felonies), because of their words, gestures and actions, the two shared each other's criminal intent.

Which by Model Penal Code § 3.04 (2)(b) provides that an individual may use deadly force to protect another under the same circumstances when he could act to protect himself. *State v. Kyllö*, 766 Wash. 2d 856, 215 P.3d 177 (2009) Wash. (Proof of self-defense requires a subjective reasonable belief of imminent harm from the victim); *People v. Wright* 35 Cal. 4th 964, 111 P3d 973, 28 Cal. Rptr. 3d 708 (2005) (noting the objective and subjective standard of self-defense)

Under the rights given by these cases and statutes Petitioner requests suspension or execution of sentence through the power of the Courts § 19.2-304 and the former § 53-272 to restore to a useful place in society an offender who is a good social risk. *Slayton v. Commonwealth*, 185 Va. 357, 38 S.E.2d 479 (1946). *Grant v. Commonwealth* 223 Va. 680, 292 S.E.2d 348 (1982)

In addition to these cases and statutes, A person subject to duress may justifiably violate the literal language of the criminal law in order to avoid harm of greater magnitude. *Sam v. Commonwealth* 13 Va. App. 312, 411 S.E.2d 832 (1991).

Also one may kill to protect his family. On the trial of S. for the murder of E., if S. shot E. under reasonable apprehension that his own life or that of some member of his family was in imminent danger or under a reasonable apprehension that the deceased intended to burn the dwelling house of his mother, or commit some other known felony, and that there was imminent danger of such design being carried into execution, he is justified in so doing, though such danger was unreal. *Stoneman v. Commonwealth* 66 Va. (25 Gratt.) 877 (1874) *Green v. Commonwealth* 122 Va. 862, 94 S.E. 940 (1918)

Though victims survived, Petitioner was justified in protecting self and the occupants of his residence from imminent danger.



### STATEMENT OF THE CASE

Petitioner, his Companion & Child developing in his companion's womb were put in imminent danger by unrelenting parties. The circumstances of the situation caused the Petitioner to succumb to duress though such danger was actually real.

Petitioner's state of mind was not presented or argued by counsel during trial. Said condition would justify his actions against true danger. *Epperly v. Commonwealth*, 224 Va. 214, 294 S.E.2d 882 (1982) states "Defendant's state of mind determines intent."

Many facts that could not have been proven because requested discovery would not be found without undue hardship. Instructions that would have defined for the jury the relationship of passion, duress & malice as they apply to violent charges would have produced a different result at trial.

After conviction, lower courts failed to produce transcripts that would prove victim's conspiring to common felonies §§ 18.2-22 and possession burglary § 18.2-94 & abduction § 18.2-48 tools. Facts that were overlooked and validation of the imminent danger presented to the Petitioner seeks to be restored into society.

### REASONS FOR GRANTING THE PETITION

Petitioner exercised The model Penal Code § 3.04(2)(b) because the use of such force was necessary to protect his loved ones and himself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force  
State v. Kylo 766 Wash.2d 856, 215 P.3d 177 (2009)

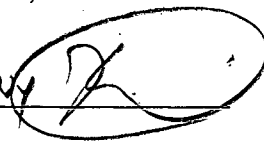
Defendant, was under duress due to the actions and threats of victims, (in conjunction with a mild traumatic head injury), directed to the injury itself, performed in a fashion to avoid harm of greater magnitude. Sam v. Commonwealth 13 Va. App. 312, 411 S.E. 2d 832 (1991)

A hard look at defendant's case with respect to a material or fact namely the defendant's mental capacity to make decisions, recollect events and perceive a harmful situation in which real threats and actions were used at time of alleged offenses will produce an opposite result if granted another trial and expert opinion by a neurologist.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Karl-Hein Dury 

Date: 08-19-19