No. 19-7750

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

RUSSELL BROWN,

Petitioner,

v.

SHAWN P. PHILLIPS

Respondent.

On Petition for Writ of Certiorari to
the Sixth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by,
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QUESTIONS PRESENTED

This case presents two important nationwide issues: the first concerns an inappropriate application of a U.S. Supreme Court precedent and whether this court has the authority to enforce the Supreme Law of the land the U.S. Consitution when the lower courts have failed to properly apply it to the facts of a case, and the second concerns an issue that this court has yet to set a controlling precedent for. This petition represented an opportunity for the Supreme Court to re-establish our Constitution, the best document ever written, as the Supreme law of the land.

(1) Whether it's a U.S. constituion Due Process violation proscribed by this court in Jackson v. Virginia, for Mr. Brown's 1st degree murder conviction to be based on evidence insufficient to prove the required "premeditation" element of the offence?

(2) Since self-defense is a constitutionally protected conduct, then is it a due process violation for a trial court to refuse to give a self-defense instruction to the jury when it's an issue at trial or the evdience demonstrates the possibility thereof?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

The Petitioner, Russell Brown, , respectfully prays that a Writ of Certiorari be issued to review the judgement and opinion of the Sixth Circuit Court of Appeals, rendered in these proceedings on December 17, 2019.

OPINION BELOW

The Sixth Circuit Court of Appeals affirmed petitioner's conviction in its Case no. 19-5577. The opinion is unpublished, and is reprinted in the appendix to this petition at 1a, infra.

JURISDICTION

The original opinion of the Sixth Circuit Court of Appeals was entered December 17, 2019.

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

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions are involved in this case.

U.S. CONST., AMEND. VI

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.

U.S. CONST., AMEND. XIV

Section 1. 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.

28 U.S.C. §2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on grounds that he is in custody

in violation of the Constitution or laws or treaties of the United States.

(3)(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement 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 evdience presented in the State court proceeding.

STATEMENT OF CASE

Petitioner filed a Direct appeal from his conviction and sentence. On November 20, 2014, the Tennessee Court of Criminal Appeals ("TCCA") affirmed Petitioner's convictions. State v. Brown, No. E2013-02663-CCA-R3-CD, 2014 WL 12649802 (Tenn.Crim.App. No. 20, 2014), perm.app. denied (Tenn. 2015).

On June 29, 2015, Petitioner filed a Pro Se petition for post-conviction relief in the trial court [Doc. 10-12 at 3-69, 72]. The trial court denied relief, the TCCA affirmed that denial, and the Tennessee Supreme Court ("TSC") denied Petitioner's application for permission to appeal. Brown v. State, E2016-00437-CCA-R3-PC, 2016 WL 6087671 16 *1 (Tenn.Crim.App. Oct 18, 2016), perm.app denied (Tenn. 2016).

Petitioner then filed a timely habeas corpus that was denied on April 24, 2019, and that court also denied the COA. Brown v. Hampton, No. 1:17-cv-29-RLJ-CHS, 2019 WL 1795926 (E.D.Tenn. April 24, 2019). Petitioner then filed a COA in the U.S. Court of Appeals, 6th Cirucit, that was denied on Decmber 17, 2019. Brown v. Hutchinson, No. 1:17-cv-00029 (12/17/2019).

Now, Petitioner is filing this Writ of Certiorari in the honorable U.S. Supreme Court.

REASON FOR GRANTING THIS WRIT

1. It's a U.S. Consitutional Due Process violation proscibed by this court in Jackson v. Virginia, for Mr. Brown's 1st degree murder conviction to be based on evdience that is insufficient to prove the required "Premeditation" element of the offense?

A. Synopsis of Tennessee Court of Criminal Appeals Decision:

On direct review, Petitioner presented to the TCCA this claim. State v. Brown, No. E2013-02663-CCA-R3-CD, 2014 WL 12649802 (Tenn. Crim. App. Nov. 20, 2014), Perm. App. denied (Tenn. 2015), at *4. The TCCA began its discussion of the claim by referring to Jackson as the rule controlling challenges to the sufficiency of evidence, then turned to the elements of the offense of conviction. Id., 2014 WL 12649802, at *4-5. Citing to Tennessee Code Annoted § 39-13-202 (a) (1) (2007), the TCCA stated: "first degree murder is the premeditated and intentional killing of another." Id., 2014 WL 12649802, at *5. The TCCA defined "premeditation" as:

> an act done after the exercise of reflection and judgment... "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exit in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Id, 2014 WL 12649802, at *5 (quoting Tenn. Code Ann. §39-13-202 (D).

Summarizing the proof which sustained the first-degree premeditated murder conviction, the TCCA pointed to evidence that established that the victim died as a result of multiple stab wounds; that Petitioner testified that, by the time he picked up the knife, the fight that had ensued between the victim and him had subsided; and that he picked up the knife with the intent to

harm the victim. Id., 2014 WL 12649802, *5. The TCCA also pointed to evdience showing that Petitioner stabbed the victim 19 times, including several times in the victim's neck and chest, and that the victim likely would have survived his wounds (including two neck and chest wounds that would have been fatal within minutes) if he had received medical treatment. Id 2014 WL 12649802, at *5.

Other circumstances indicative of a state of mind of premeditation, according to the TCCA, proof of Petitioner's procurement of a deadly weapon; his use of the weapon to inflict 19 stab wounds (including several to the victim's neck and chest, both vital areas of the body) on an unarmed victim; his failure to render aid to the victim, despite seeing him bleeding profusely: his destruction of evidence by setting the bed on fire; his flight from the scene; and his disposal of the murder weapon, the TCCA found that such proof was sufficient to support a rational juror's inference that Petitioner acted with premeditation in committing the killing. Id, 2014 WL 12649802, at *6.

the TCCA, while acknowledging that Petitioner asserted that his voluntary intoxication rendered him incapable of premeditation, nonetheless reasoned that the jury heard evidence that petitioner was under the influence of various drugs and alcohol at the time of the killing and evidence in the form of conflicting testimony from two experts about the effects of those drugs and whether Petitioner had the capability to premeditate at the time of the killing. Id, 2014 WL 12649802, at

*6. Observing that the jury was properly instructed on intoxication and specifically told of the relevance of intoxication of a defendant's culpable mental state, the TCCA held that the jury, by its verdict, had determined that Petitioner acted intentionally and with premeditation when he stabbed the victim and that his voluntary intoxication did not negate that intent. Id., 2014 WL 12649802, at *6. The TCCA rejected Petitioner's claim, finding that he was not entitled to relief. Id. 2014 WL 12649802, at *6.

B. The Sixth Circuit decision:

Petitioner has presented nothing to show that the TCCA unreasonably determined that the evidence presented to the jury was sufficient to sustain his first-degree premeditated murder conviction. When there is conflicting evdience regarding an issue, a jury's choice between such evidence furnishes no basis for habeas corpus relief. Carazos v. Smith, 565 U.S. 1, 6 (2011)("[A] reviewing court 'faced with a record of historical facts that supports conflicting inferences must presume - even if it does not affirmatively appear in the record - that the tier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'") (quoting Jackson, 443 U.S. at 326). Petitioner presented evdience to show intoxication; the state presented contrary evdience; and the jury chose to accept the State's version of events.

Given the above proof, the 6th Circuit found that TCCA's application of Jackson was not unreasoable and that its resulting decision was not based on an unreasonable factual determination. No writ will issue with respect to this claim.

C. Standard of Review:

According to the U. S. Supreme Court, the Constitutional sufficieny of evidence to support a criminal conviction is governed by Jackson v. Virginia which requires a Court to determine whether a defendant's conviction was obtained as the result of evdience that is sufficient to persuade a properly instructed, reasonable, jury of his guilt beyond a reasonable doubt. See Jackson v. Virginia, 99 S.Ct. 2781 (1979).

In re Winship, 397 U.S. 358 (1970), the Supreme Court held that due process requires the factfinder in a criminal case to convict only on proof beyond a reasonable doubt of every fact necessary to constitute the crime..charged. Id at 364. Further, in Jackson v. Virginia, the court concluded that habeas courts must evaluate state convictions by determining whether a rational tier of fact could have found the defendant guilty beyond a reasonable doubt. Id. at 2792. In so deciding, the court established a Constitutionally mandated standard for review of all criminal convictions. See Harvard Law Review, 93 harv.L.Rev. 210, Nov. 1979, Standard of review of Sufficiency of Evidence supporting criminal conviction.

"The requirement that guilt of a criminal charge be established by proof beyond a reasobale doubt dates at least from our early years as a nation. The demand for a higher degree of persausion in criminal cases was recurrently expressed from ancient times, (though) its cyrstallization into the formula beyond a reasonable doubt seems to have occurred as late as 1798. It is now accepted

in common law juridiction as the measure of persuasion by which the prosecution must convince the tier of all the essential elements of guilt." In re Winship, at 361.

"Expression in many opinions of this Court indicates that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." See, for example, Miles v. U.S., 103 U.S. 304 (1881)... Coffin v. U.S., 156 U.S. 432 (1895). Mr. Justice Frankfurter stated that [it's] the duty of the Government to establish...guilt beyond a reasonable doubt. This notion - basic in our law and righty one of the boast of a free society - is a requirement and a safeguard of due progress of law in the historic, procedural content of 'due process." Leland v. Oregon, supra, 343 U.S. 790, 802-803 (1952). (dissenting opinion). In a similar vein, the court said in Brinegar v. U.S., 338 U.S. 160, 174 (1949), that (g)uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has cyrstalized into rules of evdience consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty, and property. See Davis v. U.S., supra, 160 U.S. 469, 488 (1895). Further, this Court said in Davis, "that the requirement is implicit in 'consitutions...(which) recognize the fundamental principles that are deemed essential for the protection of life

and liberty.'" see In re Winship, 397 U.S. 358, 362 (1970); quoting Davis v. U.S., supra, 160 U.S. 469, 358 (1895).

In re Winship, Court stated, "no man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them...sufficient to show beyond a reasnoable doubt the existence of every fact necessary to constitute the crime charged.' Id. at 484, 493.

The reasonable-doubt standard plays a vital role in the [American scheme of criminal procedure]. It's a prime instrument for reducing the risk of convictions resting on factual error. The Standard provides concrete substance for the persumption of innocence - that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law. In re Winship, 160 U.S. at 363; quoting Coffin v. U.S., supra, 156 U.S. 432, 453 (1895).

"The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certianity that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in Speiser v.

Randall, supra, 357 U.S. 513, 525-526 (1958); there is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value - as criminal defendant his liberty - this margin of error is reduced as to him by the process of placing on the other party the burden of...persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of... convincing the factfinder of his guilt. To this end, the reasonable doubt standard is indispensable, for it 'impresses on the tier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' In re Winship, 160 U.S. at 364; quoting Dorsen & Rezneck, In re Gualt and the Future of Juvenile Law, 1 Family Law Quarterly, no. 4 pp. 1, 26 (1967).

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in application of the criminal law. It is critical that the moral force of the crimnal law not be diluted by a standard of proof[, or federal review of that standard,] that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a crimnal offense without convincing a proper factfinder of his guilt with utmost certainty [, and

federal review thereof.] See In re Winship, 160 U.S. at 364.

"Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicity hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasnable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 160 U.S. at 365.

In re Winship, the Supreme Court held that due process requires the factfinder in a crimnal case to convict only on proof beyond a reasonable doubt of every fact necessary to constitute the crime... charged. See In re Winship, 160 U.S. 365. In Jackson v. Virgina, the Court concluded that habeas courts must evaluate state convictions by determining whether a rational tier of fact could have found the defendant guilty beyond a reasonable doubt. In so deciding, the Court established a constitutionally mandated standard for review of all criminal convictions. See Jackson v. Virginia , 99 S.ct. 2781 (1979).

D. Supportive facts:

Under the rule of In re Winship the State of Tennessee was under a constituional obligation to prove Mr. Brown's guilt beyond a reasonable doubt, and in his case the evidence in insufficient to support his conviction for first degree murder. Specifically, he contends that the state failed to present adequate evidence that the killing was premediated. He avers that analysis of the appropraite factors bearing on the issue of premeditation reveal that the murder was not premeditated.

First degree murder as relevant to this issue is defined as a premediated

and intentional killing of another. See Tennessee Code Annotated §39-13-202 (a)(1). The definiton of first degree murder includes a subdividsion on the meaning of "premeditation:"

As in subdivision (a)(1), "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself... The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be caple or premeditation. Tennessee Code Annotated §39-13-202 (d). Further, the Tennessee Supreme Court has ruled that the element of premeditation is a question for which may be established by proof of the circumstances surrounding the killing.

The defendant testified that he and the victim were childhood friends. When they became adults the relationship changed to a sexual relationship based on the victim providing the defendant drugs.

The defendant testified that when the incident occurred he and the victim were spending the night together at the Days Inn Motel to celebrate the defendant's 35 brithday and New Year's Eve together.

The state did not establish that an intent to kill was formed prior to the act, nor that a motive existed for the killing: Just consider, (1) The state failed to present evidence of any prior incident of violence between the parties prior to the killing; (2) The defendant had no prior criminal history of violenece or assaultive behavior towards others; (3) The state

failed to present evdience of any declaration by the defendant to harm or kill the victim; and, (4) The state failed to present evidence of procurement of a weapon or preparation before the killing for concealment of the crime.

The state did not establish that petitioner's act was free from excitement or passion: Specifically,

The defendant inflicted multiple wounds upon the unarmed victim with a knife present on the nightstand that was used to cut crack cocaine.

Dr. Christopher Lochmuller testified for the state that the kind of stab wounds seen on the decedent were consistent with the victim moving as he was being stabbed.

He testified that there were no wound on the decendent that would have killed him within seconds.

Dr. Lochmuller testified that there were three significant stab wounds: a stab wound to the neck, identified by letter "C", a stab wound of the neck, identified by letter "D", and wound to the chest, identified as letter "E".

He testified that those injuries would not have caused immediate death and none would have incapacitated the victim from being able to move.

Dr. Lochmuller testified that the decedent may have sustained abrasions from a struggle or altercation between the parties.

There was evidence of alcohol and drug use by the parties found in the motel room. Detective Wattenbarger testified that

there was a bottle of Kahlua and shot glasses found in the motel room.

Detective Wattenbarger testified that he created a scene inventory list from the items collected at the scene and among the items he collected was described as a "portion of a glass pipe."

He testified that there was a Louie's Liquor Store receipt that appeared that a hundred dollars worth of various liquors had been purchased.

Detective Wattenbarger testified that he found a baggie in the decendent's vehicle that contained cocaine.

Dr. Lochmuller testified there was present in the blood analysis of the decedent cocaine and benzolecgonine; which is a metabolite of cocaine; hydrocodone and oxycodone.

The defendant, Russell Brown, testified he began using cocaine when he was 16 years old.

Defendant testified that he continued the use of crack cocaine on a daily basis until he was arrested on this case.

If he couldn't get crack cocaine he would use marijauna, prescription pills, and on occasion, methamphetamine.

Alma Brown testified she was the defendant's mother and that she knew the defendant used crack cocaine.

She testified that the victim and defendant were friends since teenage years and that the victim had spent the night at her home numerous times when they were both young.

The defendant asserts he did not set the bed on fire to destroy evdience of the killing. He testified that he set the fire because he didn't want any traces of what had happened to him to ever exist.

The defendant was not clam after the killing:

Defendant testified that after he set the cover on fire he put on his clothes and left in the victim's car.

He testified he did not take any money belonging to the victim. He said they both were wearing black jackets and he grabbed the victim's jacket by mistake instead of his.

Defendant testified he went to Calhoun, Tennessee to his uncle's house and called his mother from there and she came and he told her what had happened.

He left and went to another uncle's house in Niota, Tennessee. Defendant testified he hid the car in the woods and left with his uncle and his wife and rode around while they tried to talk to him to calm him down.

After several hours of riding around, his uncle took him to the home of another uncle, Robert Johnson, in Cleveland, Tennessee. His uncle was retired from the Sheriff's department and at that point he turned himself in to the Cleveland police.

In sum, the evidence showed:

That the defendant and the victim decided to spend the night at the Days Inn to celebrate New Year's Eve and the defendant's birthday.

He and the victim went Chattanooga to purchase alcohol and to buy more cocaine because they had ran out.

When the parties returned to Cleveland the victim bought hydrocodone, Xanax and Oxycontin pills.

He and the victim were using drugs from the time they left Cleveland going to Chattanooga until they came back to the victim's apartment.

They continued to use drugs when they got back to the apartment.

While they were at the Days Inn room they continued their drug use and had sex.

They consumed a lot of alcohol and they both were using cocaine.

Defendant testified that the victim never performed anal intercource on him because he did not consider himself to be a homosexual. The victim never discussed having anal intercourse with the defendant until that night. The victim said "I'm gonna get some of that ass tonight." Defendant testified they had never had that type of sexual activity and he was opposed to it.

Defendant testified that after falling asleep he awoke to the victim penetrating him.

He testified that he got the victim off of him quickly and an altercation occurred between them. He grabbed the open knife from the night stand and began stabbing the victim.

Defendant testified that he continued to stab the victim because he was really mad that he would violate him like that. It was not part of the relationship and had never been part of the relationship.

Defendant testified on cross-examination the victim "told him he had AIDS while they were fighting. He was upset that after knowingly, willingly, having let me perform on him and him attempting to have anal intercourse with me."

The state never refuted the Defendant's assertion he was under the influence of alcohol and crack cocaine at the time of the killing.

State's evidence from the crime scene and victim's vehicle supports the parties were using both mind altering and mood altering substances before the killing.

The results of the blood analysis of the victim as testified to by Dr. Chistopher Lochmuller supports the defandant's claim the parties were using drugs and alcohol together prior to the killing.

Dr. Louis Ledbetter testified as an expert on the effects of alcohol and narcotics on the human brain and central nervous system. Dr. Ledbetter testified that the use of crack cocaine causes the brain to go into high overdrive. It makes a person nervous edgy, hyper-reactive, aggressive, and causes an extreme high. It cause people to overreact to certain situations.

Dr. Ledbetter testified that the levels of cocaine in the

victim's system would show he had used cocaine within the last hour and a-half prior to his death.

The victim had also previously used cocaine within the last six to 12 hours or so and had both hydrocodone and oxycodone within the last few hours of his life.

She testified that the amount of drugs in the victim's system affects judgment. It affects perception of what is occurring, affects the ability to process information; can cause agitation and lower inhibitions.

Dr. Ledbetter testified that somebody under the influence of drugs like cocaine is like "the filter is gone." They lose their boudaries, the inhibitions and their ability to process thoughts and react often times in a violent and risky way. The brain under the influences of narcotics is not a normal brain.

Dr. Ledbetter testified that the Defendant told her that on the night of the incident, he was under the influence of alcohol, Xanax, marijauna, hydrocodone, and crack cocaine.

Dr. Ledbetter testified as an expert in Neurology that her expert opinion based on a reasonable degree of medical certainty that the Defendant did not have the ability to premeditate homicide. Dr. Jerry Glenn Newman testified for the State as an expert in psychiatry. Dr. Newman testified that the combination of alcohol and drugs could have an additive effect to the mind that affects decision making. It could affect perception, judgment, ability to process information, and it could affect the emotional part of the brain.

He tesified that because of the use of the drugs in combination, could lower inhibition. The person could know that something was wrong, but because of the effects these substances have on the brain, it could cause difficulty controlling ones "conduct".

Hence, it's a U.S. constitutional Due Process violation proscribed by this court in Jackson v. Virginia for Mr. Brown's 1st degree murder conviction to be based on evdience that is insufficient to prove the required "premeditation" element of the offense, which means that this honorable court should grant Certiorari to review this important question of law.

2. Since self-defense is a constituionally protected innocent conduct, it is a due process violation for a trail court to refuse to give a self-defense instruction to the jury when it's an issue at trial or the evidence demonstrates the possibility thereof.

A. Synopsis of Tennessee Court of Criminal Appeals Decision:

In this claim, Petitioner maintains that the trial court refused to give an instruction on self-defense, although the evidence shows that he was acting to defend himself against the rape and against "getting AIDS -- a deadly disease" [Doc. 1 at 26-27]. In Petitioner's reply, he argues additionally that he was justified in killing the victim because the victim had breached their understanding of no anal penetration of Petitioner; that Petitioner was fearful that the victim would forcibly complete the rape he had started; and that Petitioner's judgment was impaired by his emotional responce to the rape [Doc. 12].

Citing to a Sixth Circuit case, Baker v. Yukins, 199 F.3d 867 (6th Cir. 1999). Petitioner maintains that failure to instruct that a defendant would have been justified in using deadly force to stop a rape is not harmless error and that the TCCA's rejection of his jury-instruction claim was an unreasonable application of law [Doc. 12, Reply at 8-9]. For the first time in these habeas proceedings, Petitioner claims in his reply that the trial court's error deprived him of the right to present a full defense [Id., at 9].

Respondent counters that Petitioner, having failed to establish that he reasonably believed himself subject to imminent harm, was not entitled to the jury instruction and that, therefore, the claim should be denied [Doc. 11 at 27].

The TCCA then reviewed the law on self-defense. Under Tennessee law, "a person not engaged in unlawful activity and in a place he has a right to be is jsutified in using 'force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.'" Id., 2014 WL 12649802, at *8 (quoting Tenn. code Ann. § 39-11-611 (b)(1)). The person must have "a reasonable belief that there is imminent danger of death or serious bodily injury" and the danger creating this belief must be "real, or honestly believed to be real at the time" and founded upon objectively reasonable groud " Id., 2014 WL 12649802, at *8 (all citations

omitted). The TCCA pointed out that "a defendant is only entitled to a defense jury instruction where the issue is fairly raised by the evidence" and that defendant bears the burden of introducing such evdience. Id., 2014 WL 12649802, at *8.

The TCCA iterated testimony given at trial that was relevant to the issue. Petitioner testified that, when he awakened to find the victim sexually assaulting him, he easily pushed the victim off of him and ended the assault. Id., 2014 WL 12649802, at *8. Petitioner further testified that the two engaged in a physical fight, but that the fight had ended when he picked up pocket knife with the intent to hurt the victim. Id., 2014 WL 12649802, at *8. An expert testified that petitioner had disclosed to the expert that he wanted to hurt the victim "because the victim hurt [him]. " Id., 2014 WL 12649802, at *8. The testimony, so determined the TCCA, did not suggest that the Defendant reasonably believed he was in danger of imminent death or serious bodily injury when he attacked the victim with the pocket knife. Id., 2014 WL 12649802, at *8.

The TCCA next discussed Petitioner's self-defense theory predicated on the victim's disclosure that he had AIDs after he and Petitioner had engaged in sexual conduct. The TCCA determined that "the victim may have suffered from AIDs does not justify physical aggression out of fear of contracting the disease." Id., 2014 WL 12649802, at *8

(citations ommitted). The TCCA reasoned that, based on Petitioner's testimony, the fight between the victim and himself was over by the time he picked up the knife and attacked the victim. Id., 2014 WL 12649802, at *8. The TCCA reasoned that the prevention of possible exposure to AIDs did not motivate Petitioner's knife attack on the victim because Petitioner already had been exposed to that disease. ID., 2014 WL 12649802, at *8. Concluding that the above summarized proof did not raise an issue as to whether Petitioner acted in self-defense, the TCCA found no error in the trial court's refusal to instruct the jury on self-defense. Id., 2014 WL 12649802, at *8. It denied Petitioenr relief on his jury-instruction claim. Id., at *8.

B. The Sixth Circuit's Decision:

The resolution of this issue hinged on state law governing whether the evidence fairly raised the issue of self-defense so as to entitle a defendant to a self-defense instruction. The Supreme Court teaches that "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." Estelle v. McGuire, 502 United States 62, 76-68 (1991). Hence, whether the denial of a jury instruction on self-defense violated state law generally is not a cognizable claim

in this habeas court. See Phillips v. Million, 374 F.3d 395, 397 (6th Cir. 2004) (explaining that "[s]tate-law trial errors will not warrant habeas relief unless the errors rises to the level of depriving the defendant of fundamental fairness in the trial process."). The Court sees no fundamental unfairness in the state court's refusal to instruct petitioner's jury on the state law of self-defense.

Moreover, Petitioner does not cite to a Supreme Court case that holds that a criminal defendant is constitutionally entitled to a self-defense instruction, and this Court has found no such case. Indeed, there is authority to the contrary. See Horton v. Warden, Turmbull Corr. Inst. 498 F. App'x 515, 523 (6th Cir. 2012) (explaining that there is "no Supreme Court decision unmistakebly setting down" the rule "that a criminal deefndant has a due process right to a jury instruction on self-defense"); Phillips 374 F.3d at 397 (observing that a petitioner "offered no United States Supreme Court authority suggesting that the [state] courts unreasonably applied clearly estblished federal law in denying him a jury instruction on self-defense"). The Supreme Court "has held on numerous occasions that it is not an unreasonable application of clearly established federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court." Knowles v. Mitzayance, 566 U.S

111, 122 (2009) (citing Wright v. Van Patten, 552 U.S. 120, 123 (2008) (per curiam) (internal quotation marks omitted)).

Because the Supreme Court has not squarely-established the specific legal rule that the Constitution guarantees a criminal defendant a self-defense instruction, the state court's resolution of Petitioner's claim cannot be contrary to or an unreasonable application of controlling rule in a Supreme Court case. Accordingly, Petitioner can be granted no releif on his claim.

C. Standard of Review:

With respect to the fourteenth Amendment substantive due process claim, the question is whether the right is "so rooted in the tradition and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, 291 U.S. 97, 105 (1934), quoted *7 with approval, Patterson v. New York, 432 U.S. 197, 201-202 (1977). It should not be open to question that self-defense is such right. As Judge Murnaghan wrote in Griffen v. Martin, 785 F.2d 1172, 1180, n.24 (4th Cir. 1986):

> "...Since a time before the formation of our nation, and hence the existence of a Due Process Clause...a homicide committed in self-defense simply has been no crime."

At least since the sixteenth century, a homicide which resulted

from an act done in self-defense was justifiable and not unlawful. Mullaney v. Wilbur, 421 U.S. 684, 692 (1975). It was (and is) " "lawful and justifiable to resist certain attacks, even by the death of the assailant, and the party [was] without blame." East. treatise of the Pleas of the Crown 217 (1803).

When courts and commentators alike speak of self-defense, they speak in terms of the "right of self-defense." This phrase is not accidental, for the root of self-defense run deep within American common law, finding its seeds in English common law. Blackstone described three primary and overcrowding rights retained by individuals "which [are] not required to be sacrificed to public convenience." 1 Blackstone, Commentaries on the Laws of England, ch. 1. p. 129 (1783). These three rights are "the right of personal security; the right of personal liberty; and the right of private property." Id.

The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation... For whatever is done by a man, to save life of members is looked upon as done upon the highest necessity and compulsion." Id. at 129-130.

Even under the tyrannical reign of slavery it was acknowledge that the slave had the right to act in self-defense in order to preserve his own life. Congressman John A. Bingham, author of section I of the Fourteenth Amendment, treated self-defense as "the acknowledged right of man..."
This right was also recognized in early Federal case law.

"Where crime is commited with impunity...those unprotected by other sanctions ... [are compelled]... to reply upon physical force for the vindication of thier natural rights. There is no other remedy and no other secuirty." United States v. Rhodes, 27 Fed. cas. 785 (Cir.Ct.Ky. 1866).

The right to defend one's self is a basic fundamental right rooted in such basic documents as the Declaration of Independance, stating: "that all men are endowed by thier creator with certain inalienable rights...among these are life." As recognized by the Court of Appeals of Texas:

"Love of life and its preservation is the first great law of nature. Sir Wm. Blackstone says, 'Self-defense, therefore, as it is justly called is the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society.'" Reed v. State, 11 Tex. Ct. App. 509, 517 (1882).

Thus, the right of lawful self-defense has been recognized as an "inalienable right," id., at 517.

In United States v. Morris, 125 F. 322 (E.D.Ark. 1903), Judge Trieber held that the right to lease land was a fundamental right of every freeman, can it be doubted that the right to defend one's own life is at least as "fundamental" and "inalienable" as the right to lease land for farming purposes? "...some truths are indeed self-evident. When a killing is, by reason of self-defense, rightful, not wrongful, i.e., is lawful, there is no crime.' Griffen v. Martin, 785 F.2d 1183 (Murnagham, J).

The Ninth Amendment also recognizes that:

"There are additional fundamental rights, protected from governmental infringement which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." Griswold v. Connecticut, 381 U.S 479, 488 (1965).

The right to privacy recognized in Griswold would be a hollow gurantee if, in a time of necessity, a person could not defend herself from unlawful attacks without subjecting herself to criminal prosecution this would be an unconsicionable governmental "invasion of [one's] indefeasible right of personal security," Boyd v. U.S., 116 U.S. 616, 630 (1886), and would surely sweep too broadly into an area contitutionally protected freedom.

Ultimately, the right of self-defense;

"reflects a fundamental societal perception that in a situation where one person must die, it is preferable that the innocent party, the non-aggessor, survive." Note, "The Constitutionality of Affirmative Defenses After Patterson v. New York, 78 Col. L. Rev. 655, 672 (1978).

Consequently, one may "save his own life by sacrificeing the life of one who persists in endangering it." Stoffer v. State, 15 Ohio 47, 53 (1864). It was for reasons such as these that Sixth Circuit Judge Merritt has properly concluded that: "...the Constitution prohibits a state from elminating the justification of self-defense from a criminal law, and requires the state to prove as an element of the crimes of

assault and homicide that no such self-defense justification exists.' Isaac v. Engle, 646 F.2d 1129, 1140 (6th Cir. 1980) (dissent), rev.d on other gorunds sub nom, Engle v. Isaac, 456 U.S. 107 (1982).

As stated by the 4th Circuit:

"...it is elementary and fundamental to our jurisprudence that killing or wounding in self-defense is simply no crime at all." Sarah Thomas v. William D. Leeke, 725 F.2d 246, 250 n.2 (4th cir. 1984), cert denied, 469 U.S. __, 105 S.Ct 18, 83 LE2d 148 (1984).

Because self-defense is a constitutionally protected right, one exercising that right is engaged in innocent conduct. To require an accused to bear the burden of proof upon the issue of self-defense is to require the accused to prove her innocence in violation of the principles enunciated in In re Winship.

Hence, all of the above clearly demonstrates that self-defense is a constitutionally protected right, and as such it would be a violation of that right for a judge not to give self-defense instructions to a jury when it is an issue at trial or the evidence could support such.

D. Supportive facts:

In this case, the defendant, Mr. Brown was defending himself from an unlawful rape, then attempted rape, and from getting AIDs. Hence, Mr. Brown was clearly acting in self-defense. However, the judge refused to issue self-defense instructions

to the jury effectively denying them the opportunity to consider this as a defense to the charge, and denying Mr. Brown's Due Process right to self-defense.

A. Petitioner and the alleged victim had both been drinking alcohol and doing drugs.

B. Petitioner stayed the night with the alleged victim.

C. Petitioner was woke-up by the alleged victim raping him, anally penetrating him.

D. This led to an immediate physical confrontation between Petitioner and the alleged victim.

E. During the altercation the alleged victim told Petitioner that he had AIDs.

F. Afterwards, the alercation escalated, because Petitioner was now not only defending himself from being raped, but also from getting AIDs - a deadly disease.

All of which, resulted in the death of the alleged victim. Hence, self-defense jury instructions should be given in Tennessee trials if:

A. The defandant is resisting the immiennt or present use of unlawful force against him,

B. The degree of force that is used by the defendant to protect himself is not more than is reasonably necessary to protect him from the threatened harm,

C. The defendant must only use deadly force when threatened with deadly force or serious injury,

D. The defendant should not be the aggressor.

In this case, Mr. Brown is woken-up by alleged victim raping him. An Altercation ensues between two men that have been drinking and using illegal drugs. In the heat of the moment the alleded victim tells Mr. Brown that he has AIDS, which means that Mr. Brown might now have that deadly virus. This all took place in a very brief amount of time where the alleged victim had been the aggressor, Mr. Brown had been told that the alleged victim had possibly gave him a deadly desease, and Mr. Brown in his drug and alcohol induced state thought the alleged victim might attempt to rape him again. I mean he had already done so once. Hence, Mr. Brown met the criteria for self-defense jury instructions.

E. This act was based on "the instict" for self-preservation: Just consider, a claim of self-defense negates the voluntary act element. Act while defending one's self are not a product of the actor's volition. The reaction to an unlawful attack may very well be reflexive Surely, "detached reflection cannot be demanded in the presence of an uplifted knife." Brown v. U.S., 256 U.S. 335, 343 (1921), and the urge for self-preservation in the face of imminent peril may surpersede any capacity of the besieged victim to control his/her actions. This is so because actions taken in self-defense are based upon "the instinct" for self-preservation and arise spontaneously. In this sense [Mr. Brown's] conduct was not "willed", Holmes, The Common Law 54 (1881), and cannot be considered a completely

voluntary act within the meaning of [Tennessee's] statutory requirement.

Unfortunately, the jury was deprived of the opportunity to fairly consider this, and Mr. Brown was denied his due process right to this defense by the trial court's refusal to give jury instructions on self-defense.

Thus, it is a constitutional due process violation for a trial court to refuse to give a self-defense instruction to the jury when it's an issue at trial or the evidence demonstrates the possibility thereof.

CONCLUSION

For the reaosns stated herein, Mr. Brown moves this Supreme Court of the United Sattes to GRANT the Writ of Certiorari, thereby providing a proper application of the Jackson test, and a controlling precedent as to when self-defense jury instructions are required.

Date: 2-13-20

Respectfully submitted by,

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I declare under the penalty of perjury that the foregoing is true and correct.

Russell Brown

Russell Brown,