

**20-5299**

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IN THE  
SUPREME COURT OF THE UNITED STATES

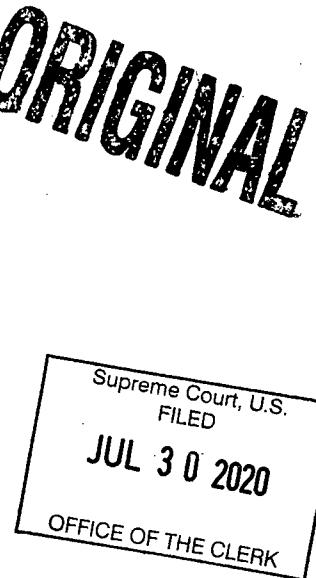
**ANTONIO BENSON,**

**Petitioner,**

**v.**

**STATE OF TENNESSEE,**

**Respondent.**



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**ON PETITION FOR A WRIT OF CERTIORARI**  
**TO THE TENNESSEE SUPREME COURT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

### **I.**

Whether the ruling of the Tennessee Supreme Court, which reversed the opinion of the Tennessee intermediate appellate court, that the Petitioner was not entitled to a jury instruction of self-defense violated Petitioner's due process protections.

### **II.**

Whether the ruling of the Tennessee Supreme Court, which reversed the opinion of the Tennessee intermediate appellate court, that the trial court properly failed to instruct the jury on the issue of self-defense violated Petitioner's Constitutional rights that every issue of fact raised by the evidence and material to the defense of self-defense be submitted to the jury upon proper instructions

**PARTIES TO THE PROCEEDING**

The petitioner in this case is Antonio Benson. The respondent is the State of Tennessee.

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*State v. Antonio Benson*

Opinion of the Tennessee Supreme Court, 600 S.W. 3d 896 (Tenn. 2020)

Reported..... Exhibit A

*State v. Antonio Benson*

Opinion of Tennessee Court of Criminal Appeals, W2017-01119-CCA-R3-CD, 2018 WL 5810004

Not reported ..... Exhibit B

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

Petitioner, Antonio Benson, respectfully petitions the Court for a writ of certiorari in State of Tennessee v. Antonio Benson, W2017-01119-SC-R11-CD, 2020 WL 2079055 (Tenn. April 30, 2020).

## **OPINIONS BELOW**

The opinion of the Tennessee Supreme Court W2017-01119-SC-R11-CD, 2020 WL 2079055 (Tenn. April 30, 2020) is unreported and is included in App. 1. The opinion of the Tennessee Court of Criminal Appeals, W2017-01119-CCA-R3-CD, 2018 WL 5810004 (Tenn.Crim.App. 2018) is unreported and is included in App. 2.

## **STATEMENT OF JURISDICTION**

The Tennessee Supreme Court issued its opinion reversing the Tennessee Court of Criminal Appeals on April 30, 2020, upholding the trial court's denial to instruct the jury regarding the defense of self-defense. This Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Tennessee Code Annotated (hereinafter referred to as "T.C.A.") § 39-11-203, *Defenses*, provides the basis for the defense of self-defense in Tennessee. In Tennessee, T.C.A. § 39-11-611, *Self defense*, is to be considered in conjunction with T.C.A. § 39-11-203, together these statutes provide the framework of the burden that a defendant must satisfy in order for a court to instruct a jury on the defense of self-defense.

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law."

## I. STATEMENT OF THE CASE

On August 22, 2013, the Shelby County, Tennessee Grand Jury returned an indictment against the Petitioner, Antonio Benson, charging him with one count of First-Degree Murder.

On January 13, 2017, a jury convicted the Petitioner of First-Degree Murder. The Defendant was sentenced to life in prison.

However, during the trial, testimony by state investigators highlighted that the victim was the first aggressor during the unfortunate events that occurred. Based upon the testimony that was developed that the victim was the first aggressor and the victim's previous violent temperament, Petitioner filed a written request with the trial court for a jury instruction on the issue of self-defense. The trial court refused to give a jury instruction on the issue of self-defense.

The Petitioner appealed his conviction to the Tennessee Court of Criminal Appeals. Petitioner raised four issues with the Tennessee Court of Criminal Appeals; however, as pertinent to this matter, the Petitioner raised the issue of whether the trial court erred in not giving a self-defense instruction to the jury. One important aspect that the Tennessee Court of Criminal Appeals referenced was that the jury, during deliberations, sent a written note to the court asking, "Is it okay to shoot someone in the back in any situation? Rather it's self-defense, someone breaking in your house, etc." The Tennessee Court of Criminal Appeals noted this "perplexing" situation in its opinion. Based upon the testimony developed at trial, the jury's question, and the totality of the Petitioner's matter, the Tennessee Court of Criminal Appeals reversed Petitioner's conviction based upon the trial court's failure to instruct the jury on the issue of self-defense.

The State filed an application to appeal to the Tennessee Supreme Court that was granted by the Tennessee Supreme Court. The Tennessee Supreme Court reversed the Tennessee Court of Criminal Appeals and reinstated the trial court verdict. The Tennessee Supreme Court opined the trial court did not err by not instructing the jury on the issue of self-defense.

Petitioner submits that he has a due process right for the self-defense instruction to be given to the jury based upon the facts and the testimony that was developed at trial. Petitioner further submits that while reasonable minds can disagree, as is seen in the fact that three separate state courts had different opinions on the issue of whether a self-defense instruction should be given to the jury, such disagreement among reasonable minds, supports Petitioner's position that the instruction should have been given to the jury for the jury to decide.

## **II. REASONS FOR GRANTING WRIT**

In dissenting from the denial of certiorari in Jackson v. City and County of San Francisco, 135 S. Ct 2799, Justice Thomas and Justice Scalia began their dissent by stating “Self-defense is a basic right”. This matter highlights an aspect of self-defense that this Court has not explored, discussed, or commented on the due process implications of a trial court’s failure to give a jury instruction regarding self-defense.

### **A. TENNESSEE’S SELF-DEFENSE FRAMEWORK**

In Tennessee, self-defense is a general defense. A person asserting self-defense is entitled to a jury instruction that he or she did not have a duty to retreat from an alleged attack only when the person was not engaged in unlawful activity and was in a place that the person had a right to be. A trial court is required to submit the self-defense jury instruction when admissible evidence fairly raises the defense. See State v. Perry, 536 S.W.3d 388 (Tenn. 2017).

### **B. UNITED STATES SUPREME COURT COMMENTS ON SELF-DEFENSE – DUE PROCESS CONSIDERATIONS**

This Court has commented on the due process implications of a self-defense jury instruction in various cases including, but not limited to, Middleton v. McNeil, 542 U.S. 946, 124 S. Ct. 2930, 158 L.Ed.2d 701 (2004), Engle v. Isacc, 456 U.S. 107, 102 S. Ct. 1558, 71 L.Ed.2d 783 (1982), Martin v. Ohio, 480 U.S. 228, 107 S. Ct. 1098, 71 L.Ed.2d 783 (1987). This Court has never commented on the due process requirements on the minimum threshold of evidence presented by a defendant that compels a trial court to issue a self-defense jury instruction. This issue is paramount in the instant matter.

**C. AMBIGUITY REGARDING THE MINIMUM THRESHOLD OF PROOF, THAT SATISFIES DUE PROCESS, THAT MERITS A SELF-DEFENSE JURY INSTRUCTION**

Ambiguity and varying standards are utilized across the country as to the minimum threshold for a trial court to provide a jury instruction on the general defense of self-defense. There is no uniform standard, which satisfies due process, for a trial court to instruct a jury on the general defense of self-defense. See the following cases as examples of varying degrees proof that justify a jury instruction on self-defense:

A. State v. Broussard, 239 N.C.App. 382, 768 S.E.2d 367 (2015) (A defendant is entitled to a jury instruction on self-defense when there is evidence from which the jury could infer he acted in self-defense.

B. Smith v. State, 76 So.3d 170 (Miss.2009) (A defendant is entitled to a jury instruction on self-defense when it is warranted by the evidence.)

C. Commonwealth v. Iacoviello, 90 Mass.App.Ct 231, 58 N.E.3d 1032 (Mass.App.Ct.2016) (A defendant is entitled to a self-defense instruction if any view of evidence would support a reasonable doubt as to whether the prerequisites of self-defense were present.)

D. State v. Low, 192 P.3d 867 (Utah 2008) (A self defense jury instruction is appropriate when there is a reasonable basis to conclude the defense applies.)

E. Vila v. State, 74 So.3d 1110 (Fla.5<sup>th</sup> DCA 2011) (A defendant is entitled to a self defense jury instruction when any evidence to support the defense has been offered.)

F. State v. Head, 255 Wis.2d 194, 648 N.W.2d 413 (Wis. 2002) (A self defense jury instruction is appropriate when the trial evidence places self-defense in issue.)

G. State v. Studd, 137 Wash.2d 533, 973 P.2d 1049 (Wash. 1999) (A jury may find self defense on the basis of the defendant's subjective reasonable belief of imminent harm from the victim if sufficient evidence in the record supports the instruction.)

H. State v. Landrus, 930 N.W.2d 176 (N.D. 2019) (If evidence supports a self defense claim the jury instruction should be given.)

There is no uniform approach to determine what level of proof is needed for a self-defense jury instruction to be issued that satisfies due process.

The issue is what level of proof must be presented by a defendant, which satisfies due process, in order for a trial court to give a jury an instruction on the defense of self-defense. Petitioner submits that the standard to satisfy due process for a self-defense instruction to be given to a jury is the minimum evidence when the defense has been offered.

In the instant matter testimony was developed at trial that the victim was the initial aggressor, injuring Petitioner by arguably breaking his nose and at a minimum striking the Petitioner with enough force to cause his nose to bleed profusely. The trial court was of the opinion that such proof, that the victim was the initial aggressor and injured Petitioner, did not rise to the level for giving a self-defense jury instruction. The Tennessee Court of Criminal Appeals disagreed with the trial court and opined that sufficient evidence had been presented by the Petitioner for the trial court to give the jury an instruction on the defense of self-defense. The Tennessee Supreme Court, agreeing with the trial court, disagreed with the Tennessee Court of Criminal Appeals, and determined that the proof developed at trial did not rise to the level of warranting a jury instruction on the issue of self-defense.

**D. GUIDANCE IS NEEDED IN ORDER TO CLARIFY THE LEVEL OF PROOF  
NEEDED TO WARRANT A JURY INSTRUCTION ON THE DEFENSE OF SELF-  
DEFENSE IN ORDER TO SATISFY DUE PROCESS**

This case is another example of the adage that reasonable minds can disagree when there is no guidance in place. After review of the threshold for a trial court to present a jury with a self-defense instruction, there appears to be widely varying applications of law across the states.

### III. CONCLUSION

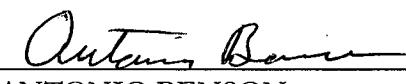
For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

  
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### CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing petition for writ of certiorari has been forwarded by first-class mail, postage prepaid, to Mr. Herbert Slatery, Attorney General and Reporter, P.O. Box 20207, Nashville, TN 37203, on this the 29 day of July, 2020.

/s/   
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ANTONIO BENSON