NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

DEREK WILLIAMSON,

Petitioner

vs.

JASON CLENDENION,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Does the failure to give a self-defense jury instruction contradict, or is an unreasonable application of, clearly established federal law regarding a defendant's due process and jury trial rights when self-defense was the crux of the defendant's case and the defendant introduced evidence to support the defense?

II.

Should the Court summarily remand because the Sixth Circuit applied the lenient standard for certifying an appeal far too stringently?

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PRAYER

Petitioner Derek Williamson prays that a writ of certiorari issue to review the judgment entered by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's unpublished order and its order denying en banc rehearing in petitioner's case are attached in the Appendix.

JURISDICTION

The Court of Appeals entered its judgment on October 29, 2021. Williamson timely moved for rehearing en banc, which was denied December 20, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State . . . ." U.S. Const. amend. VI.

The Fourteenth Amendment provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides, in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment 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 evidence presented in the State court proceedings.

28 U.S.C. § 2254.

BACKGROUND

In 2007, petitioner Derek Williamson, age 23, was friends with 32-year-old Grady Carter and his girlfriend, Adrian Holmes. *State v. Williamson,* 2011 Tenn. Crim. App. LEXIS 621 at *2-3. In the fall of 2007, Holmes split up with Carter to live with Williamson. *Id.* Carter was angry. He waged a sustained campaign to terrorize Williamson, issuing threats face-to-face, via text messages, and via voicemails. *Id.* (*See also* Williamson, Trial Tr., R.20-5, PageID# 832-33, 839-43.) Ultimately, Williamson fatally shot Carter. *Williamson,* 2011 Tenn. Crim. App. LEXIS 621 at *2.

At trial, Williamson testified that he had acted in self-defense, and two disinterested witnesses corroborated his story in material respects. (Williamson, Trial Tr., R.20-5, PageID# 858-68.) But the judge refused to instruct the jury on self-defense. (Trial Tr., R.20-5, PageID# 929-30.) After deliberating late into the evening, the jury returned a verdict for first-degree murder. (Trial Tr., R.20-5, PageID# 978, 983.)

A. Williamson's defense of self-defense

Spurned by Adrian Holmes, Carter threatened and harassed Williamson, at times on nearly a daily basis as proven by preserved text messages. (Williamson, Trial Tr., R.20-5, PageID# 829-43.) Carter also threatened Williamson in person as when he said "I'm here to kill that motherf***er" while Williamson cowered inside a car and Holmes sought help. (*Id.* PageID# 831-33.)

According to Williamson, the following gave rise to his fatal encounter with Carter on June 18. On June 17, Holmes and Carter discussed reuniting, and Carter

told Williamson that nonetheless he remained "pissed" and would "never . . . forgive" him. (Williamson, Trial Tr., R.20-5, PageID# 843-47.) On June 18, Williamson told Holmes he was moving to his mother's house; Holmes begged him to stay; and meanwhile Carter left Williamson a voicemail saying that he (Carter) would find Williamson and "kick [his] ass." (*Id.* PageID# 848-49, 852-53, 855.) Williamson then left the house over Holmes's objection, taking his wallet and the gun that he always legally carried, and he did *not* voice any threats. (*Id.* PageID# 856-58.)

Although driving to his mother's house, Williamson made a detour by Carter's house so Carter would hear his distinctive muffler and be annoyed. (*Id.* PageID# 858-61.) But when Williamson got near Carter's house, he encountered Carter standing with two friends in the "middle of the road." (*Id.* PageID# 861-63.) Since the three men were in the road, he had to stop his car. (*Id.*) He exited and still had no intention to hurt anyone. (*Id.* PageID# 863.) Carter then came towards him from the side, getting as close as about ten feet, and raised his arms in the air. (*Id.* PageID# 866.) Because Williamson thought Carter was "coming after" him, he pulled his gun from his pocket and fired it, unloading all 13 rounds in a panic. (*Id.* PageID# 867-68.) Then he drove away, self-surrendering to police three hours later. (*Id.* PageID# 868-69.)

At Williamson's trial, the foregoing evidence was presented, amounting to his claim of self-defense: He meant only to annoy Carter, but he wound up shooting Carter because Carter forced him to stop and appeared to be assaulting him, as

Carter had repeatedly tried and threatened to do. (Williamson, Trial Tr., R.20-5, PageID# 861-67, 902.)

Williamson's testimony was corroborated by others in three respects. First, a disinterested witness—Carter's neighbor—confirmed that Carter and his two friends were standing in the middle of the road when Williamson arrived. (Rollin, Trial Tr., R.20-5, PageID# 816-17.) Second, one of Carter's friends admitted Carter typically carried a little pocket knife. (S. Carter, Trial Tr., R.20-4, PageID# 548.) Third, this same friend reported that earlier that night Carter, guessing Williamson might drive by after leaving Adrian Hodges, said that if Williamson did so it would turn out to be the day he "was waiting for" and that he (Carter) would "kick his ass." (S. Carter, Trial Tr, R.20-4, PageID# 542-61.) This evidence was crucial because it would help corroborate Williamson's claim that Carter was blocking the road (to create the opportunity Carter "was waiting for") and that Carter approached him in a way that was threatening (to "kick his ass"). (*Id.*)

Defense counsel moved the trial judge to instruct the jury on self-defense. (Trial Tr., R.20-5, PageID# 929.) Under Tennessee law, a person can use force in self-defense even when the perceived assailant is unarmed and even if there is a safe way to retreat. *See State v. Renner*, 912 S.W.2d 701, 704 (Tenn. 1995); *Bitner v. State,* 139 Tenn. 144, 157-58 (1914) (using lethal force to protect from assault with "fists"). Despite these rules, the trial court refused to give the instruction. (*Id.* PageID# 929-30.)

After deliberating seven hours late into the evening, the jury found Williamson guilty of first-degree murder. (Trial Tr., R.20-5, PageID# 978, 983.)

B. On appeal, the state court upheld the denial of the self-defense instruction.

On direct appeal, Williamson argued that he was wrongfully denied a self-defense instruction. *See State v. Williamson*, 2011 Tenn. Crim. App. LEXIS 621, *38-41 (Tenn. Crim. App. Aug. 12, 2011). The Tennessee Court of Criminal Appeals (TCCA) upheld the denial of that instruction.

To make that ruling, the TCCA had to decide two things: (1) whether, as a factual matter, there was any evidence tending to show self-defense; and, (2) whether such evidence sufficed under Tennessee law to give the instruction. The following paragraph is its analysis.

> *Even considering the evidence in the light most favorable to the Defendant*, we agree with the trial court that the evidence contained in the record does not raise a factual issue of self-defense. Though the Defendant testified that he was afraid of the victim based on months of harassing text mail and voice mail messages, the victim never physically harmed the Defendant or even attempted to. On the evening of the shooting, the Defendant decided that he had had enough of the victim's haranguing and drove thirteen miles to the victim's home, with a loaded semi-automatic weapon. Upon seeing the victim approach his car, with his hands raised in the air and bearing no weapon, the Defendant said he "panicked" and unloaded the entire magazine of twelve bullets plus the one bullet in the chamber in the direction of the victim. Seven shots penetrated the victim's left back, rear shoulder and arm area. *Nothing in the record suggests that the Defendant acted to protect himself against the victim's use or attempted use of unlawful force*. Accordingly, we conclude the trial court's refusal to instruct the jury on self-defense was not error.

Id. at *40-41 (italics added).

C. The District Court and Sixth Circuit denied relief.

In this § 2254 litigation, Williamson primarily argued that the state courts had violated his federal constitutional rights by refusing him a self-defense instruction even though that instruction was supported by evidence, was warranted by state law, and was the crux of his defense. The district court denied that claim and refused to certify any issue for appeal. (App. 1, Order at PageID# 2465-69, 2486.)

The Sixth Circuit, acting through a single judge, likewise refused to certify any issue, including the one about the self-defense instruction. (App. 2, Order at 3-6.) Williamson expressly argued that he could obtain relief through each of the two avenues allowed by 28 U.S.C. § 2254(d), *viz.*, by showing both an unreasonable determination of fact under § 2254(d)(1) and a ruling contrary to, or involving an unreasonable application of, Supreme Court precedent under § 2254(d)(2).

As for the unreasonable determination of fact, Williamson expressly argued that the TCCA's decision was not entitled to deferential review because the TCCA concluded that "nothing in the record" even "suggested" self-defense. (Objections to R&R, R.42, PageID# 2447-49.) By way of rejecting that argument, the Sixth Circuit simply pointed out that a "dispute over whether factual circumstances warrant a jury instruction on self-defense is a mixed question of fact and law to which § 2254(d)(1), not § 2254(d)(2), applies." (App. 2, Order at 4.) It failed to address Williamson's argument that the TCCA had wholly mischaracterized those "factual

circumstances" (*id.*), thereby making an unreasonable determination of fact covered by § 2254(d)(1).

As for the error regarding Supreme Court precedent, the Sixth Circuit followed its binding precedent in *Keahey v. Marquis*, 978 F.3d 474 (6th Cir. 2020) holding that "[n]o Supreme Court case has clearly established a federal constitutional right to a self-defense instruction that applies to state cases." (App. 3, Mot. Rehearing at 5 (citing *Keahey*, 978 F.3d at 479, 480-81).) *But see Taylor v. Winthrow*, 288 F.3d 846, 852 (6th Cir. 2002) (indicating denial of self-defense instruction is fundamental error). Under *Keahey*, a state habeas petitioner simply cannot possible win relief by clearing § 2254(d)(2)'s hurdle.

Williamson moved for rehearing partly because the Sixth Circuit had applied the lenient standard for certifying issues far too stringently. (App. 3, Mot. Rehearing.) The Sixth Circuit denied rehearing on December 20, 2021, without any substantive explanation. (App. 4, Order.)

ARGUMENT

I. The Court should grant certiorari to resolve the circuit split as to whether there is a federal constitutional right to a self-defense instruction when fairly supported by the evidence.

This Court has recognized a general but robust rule and applied it time and again: the federal Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485 (1984). For example, this Court concluded a state court could not prohibit a defendant from introducing evidence relating to the circumstances of his confession

because "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *Trombetta*, 467 U.S. at 485)). This Court also concluded that this guarantee prohibited a state rule that would exclude from trial a defendant's evidence of third-party guilt based on the trial court's assessment of the strength of the prosecution's case. *Holmes v. South Carolina*, 547 U.S. 319, 321 (2006). Because this general rule protects procedural fairness and the role of the jury, it is grounded in both the Due Process Clause and the Sixth Amendment right to a jury trial. *See Crane*, 476 U.S. at 690.

A defendant is thwarted from presenting a "complete defense," *Crane*, 476 U.S. at 690, when an error in instructing the jury wrongfully deprives him of a defense that he has fairly supported with evidence and upon which he intended to rely. *See Cupp v. Naughten*, 414 U.S. 141, 146-47 (1973) (holding an erroneous jury instruction can "so infect[] the entire trial that the resulting conviction violates due process"); *see generally Mathews v. United States*, 485 U.S. 58, 63 (1988) ("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"). In particular, when such error wrongfully deprives the defendant of the defense of self-defense in such circumstances, the error very clearly produces fundamental unfairness since "[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present day." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010).

Accordingly, the Second Circuit has held that a state court's wrongful denial of a self-defense instruction can amount to a violation of clearly established Supreme Court precedent. *Davis v. Strack*, 270 F.3d 111, 132-33 (2d Cir. 2001). The Ninth Circuit has, in an unpublished decision, reached the same conclusion. *Lockridge v. Scribner*, 190 F. App'x 550, 551 (9th Cir. 2006) (holding that a "refusal to instruct [the] jury on the law of self-defense was an unreasonable application of clearly-established Supreme Court precedent."). *Cf. State v. Edwards*, 661 A.2d 1037, 1041 (Conn. 1995) (agreeing that a defendant "adduced sufficient evidence at trial to raise a plausible claim of self-defense and, consequently, that the trial court's failure to instruct the jury on self-defense violated his federal constitutional right to due process of law").

By expressly rejecting that view in published precedent, *see Keahey*, 978 F.3d at 479, 480-81, the Sixth Circuit has created a circuit split as to whether clearly-established Supreme Court precedent entitles a defendant to a self-defense instruction when he has fairly supported it with evidence at trial. The Sixth Circuit relied on its precedent in *Keahey* to deny relief to Williamson, who did in fact present substantial evidence of self-defense, in the form of both his own testimony and circumstantial support from disinterested witnesses. Thus, his case squarely presents this circuit split for this Court's resolution.

II. The Court should summarily vacate and remand this case because the Sixth Circuit applied the lenient standard for certifying an appeal far too stingily.

The standard for granting a certificate of appealability (COA) is very lenient. To obtain a COA on certain issues, the petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner of that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). "We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that the petitioner will not prevail." *Id.* at 338. Moreover, a COA determination is a "threshold inquiry" that "does not require full consideration of the factual or legal bases adduced in support of the claims." *Id.* at 336.

The issue Williamson presented to the Sixth Circuit for certification certainly satisfied this standard in at least two respects.

First, because there is a circuit split on the underlying legal issue (as explained above), it is obvious that reasonable jurists could debate the issue. That alone is reason to certify the issue with respect to the § 2254(d)(2) hurdle.

Second, the issue Williamson raised with respect to the § 2254(d)(1) hurdle even more obviously had merit. To decide if a self-defense instruction was required, a trial court must do two things: (1) decide, as a matter of fact, whether the

defendant presented any evidence in support of a self-defense defense (*e.g.,* his own testimony or evidence otherwise showing circumstances suggesting self-defense); and, (2) decide if that evidence is substantial enough to trigger a statutory right to the defense. Here, the state court obviously erred in that first step when it concluded that "[n]othing in the record suggests that the Defendant acted to protect himself against the victim's use or attempted use of unlawful force." 2011 Tenn. Crim. App. LEXIS 621 at *41. That was flat wrong. Hence it was an unreasonable determination of fact, which is grounds, under § 2254(d)(1), for dispensing with deferential review. The Sixth Circuit dodged this point by ignoring that the state court actually made a *factual* finding that no such evidence existed in the record. Such a dodge is improper under the lenient COA standard. It was certainly reasonably debatable whether the state court's error was an unreasonable finding of fact under § 2254(d)(1). Williamson, who is serving a life sentence, was deprived his right to his day in court under 28 U.S.C. § 2253. The Court should remand with instructions to certify his issues for appeal.

CONCLUSION

For the foregoing reasons, petitioner Derek Williamson respectfully prays that this Court grant certiorari to review the judgment of the Sixth Circuit.

March 4, 2022

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