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IN THE SUPREME COURT OF THE UNITED STATES

AVERY CURRY ARCHULETA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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I. QUESTION PRESENTED

The Petitioner, Avery Curry Archuleta, asks this Court to clarify that trial courts instruct juries that any decision on a self-defense must be unanimous.

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IV. Petition For Writ Of Certiorari

Petitioner Avery Curry Archuleta respectfully requests a Writ of Certiorari issue to review the Ninth Circuit's April 16, 2024 decision.

V. Opinion Below

United States v. Avery Curry Archuleta, No. 23399 (9th Cir., April 16, 2024)

(Memorandum attached as Appendix A).

VI. Jurisdiction

Title 28 U.S.C. § 1255 gives this Court jurisdiction; the Ninth Circuit's April 16, 2024 Memorandum makes this Petition timely under Supreme Court Rule 3.13.

VII. Constitutional Provisions and Statutes

This case implicates the United States Constitution Amendment Five:

Amendment V

No person shall ... be deprived of life, liberty, or property, without due process of law....

VIII. Statement of the Case

On March 29, 2022, a grand jury indicted Avery Curry Archuleta for,

Count 1: Assault with a Dangerous Weapon, Count 2: Assault Resulting in Serious Bodily Injury.

CR 1; ER 219.

Before trial, the Government filed Proposed Jury Instructions, Statement of the Case, Verdict Form, Voir Dire, a Trial Memorandum, and a Witness list. CR 39-45 ER, 77, 74, 71, 61, 58, 55, 49. The defense counsel filed nothing.

On December 1, 2022, the Trial Court filed its

Preliminary Jury Instructions and Final Instructions. CR 52, 53; ER 30, 12. The defense filed nothing.

Trial began November 29, 2022, CR 49, lasting three days until December 1, 2022, when the jury found the Petitioner guilty on the Government's Indictment's two counts. CR 51; ER 10 for Jury Verdict.

On February 27, 2023, the trial court sentenced the Petitioner to 87 months incarceration with 36 months supervised release. CR 69; ER 4. The Judgment and Commitment issued March 2, 2023. CR 69-71; ER 4.

On March 12, 2023, the Petitioner filed a Notice of Appeal, CR 72, and an amended notice on March 15, 2023. CR 75; ER 222. After briefing, the Ninth Circuit ruled against the Petitioner by Memorandum Decision on April 16, 2024.

This Petition follows.

FACTS

On June 19, 2021, Avery Curry Archuleta and James Begay fought. Mr. Archuleta injured his arm and James Begay had serious injuries. At trial, Mr. Archuleta argued for self-defense. Supporting self-defense, Mr. Begay testified during the prosecutor's direct examination he could not remember who started the fight:

Q: Did you start a fight with Avery Archuleta that day?

A: No, I don't remember if I did. No, I don't think so, from what I remember.

Reporter's Transcript (RT) 215.

On cross examination Mr. Begay further testified he could not remember whether he hit Mr. Archuleta:

Q: So you might have hit Avery. You don't remember whether you hit him or not. Is that true?

A: I don't think I did.

Q: I understand, but do you remember, sir?

A: No.

.....

Q: As we sit here today, how well do you think you remember the entire incident? Would you say, I remember poorly? I remember it well? How would you describe your memory of this event?

A: Very poorly.

RT 245. Mr. Archuleta and Mr. Begay were the only eyewitnesses.

Defense counsel filed no jury instructions to advance Mr. Archuleta's self-defense. When discussing instructions, the trial judge referred to

“the defense-requested instruction on self-defense.” RT 403. But, at no point did the trial court or parties review the self-defense instruction or discuss its contents.

Just before final argument, the trial court instructed the jury on self-defense but failed to instruct the jury its decision had to be unanimous:

The defendant has offered evidence of acting in self-defense. The use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against immediate use of unlawful force. However, a person is to use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if the person reasonably believes that such force is necessary to prevent death or great bodily harm.

The government must prove beyond a reasonable doubt that the defendant did not act in self-defense.

RT 423-424. Defense counsel did not object to the lack of an unanimity instruction.

IX. REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law that this Court should settle. Supreme Court Rule 10(c). Here, both the trial court and Ninth Circuit failed to uphold the law that a jury’s verdict regarding whether the defendant acted in self defense must be unanimous.

As the Petitioner pointed out to the Ninth Circuit, the trial court failed to even follow Ninth Circuit’s Standard Instruction’s unanimity requirement:

The government must prove beyond a reasonable doubt, ***with all of you agreeing***, that the defendant did not act in reasonable self-defense.

Ninth Circuit Standard Instruction, 5.10 *Self-Defense* (added emphasis). Instead, the trial court merely instructed,

“The government must prove beyond a reasonable doubt that the defendant did not act in reasonable self-defense.”

RT 424.

This Court should clarify that the Fifth Amendment’s due process clause requires a trial court to instruct the jury that its decision on self-defense must be unanimous. Because the law entitles a defendant to a self-defense instruction when “there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent or of doubtful credibility.” *United States v. Sanchez-Lima*, 161 F.3d 545, 549 (9th Cir. 1998).

X. Conclusion

This Court should clarify that failing to instruct a jury it must unanimously reject a defendant's self-defense claim is reversible error. Without such an unanimity requirement in a trial court's self-defense instruction, the jury has no way of knowing the law we require them to follow.

Respectfully submitted this 30th day of August, 2024.



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