

ORIGINAL

No. 24-6144

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Roy Fuller — PETITIONER
(Your Name)

vs.

Chadwick Dotson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Roy Fuller
(Your Name)

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(Address)

Bowling Green, Virginia 22427
(City, State, Zip Code)

540/850-8377
(Phone Number)

QUESTIONS PRESENTED

1. When does self-defense become malice?
2. When one is in a car and afraid for his life, how is it malice to shoot into the dashboard as a last resort after pleading for several minutes for the driver to stop and let him out?
3. How is this maliciously shooting into a vehicle?
4. If the defense counselor does not bring this up in appeal and in a Habeas, how is this to have any bearing?

LIST OF PARTIES

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

RELATED CASES

1. Commonwealth of Virginia v Michael Roy Fuller, No. CR-16-381, Caroline County Circuit Court. Judgment entered Jan 30, 2017.
2. Fuller v Clarke, No. 0175-17-2. Virginia Court of Appeals. Judgement entered Oct 17, 2017. Unpublished.
3. Fuller v Clarke, Virginia Supreme Court, No. 180383. Judgment entered Oct 23 2018.
4. Fuller v Clarke, Caroline County Circuit Court, No. CL 19-380. Judgment entered Feb 17, 2022.
5. Fuller v Clarke, Virginia Supreme Court, No 220301. Judgment entered Oct 27, 2022.
6. Fuller v Clarke, No. 3:23cv256, US District Court, Eastern District of Virginia. Judgment entered February 16, 2024.
7. Fuller v Dotson, No. 24-6254, US District Court of Appeals for the Fourth District. Judgment entered August 2, 2024.

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TABLE OF AUTHORITIES CITED

CASES

Justified Self Defense:

Justifiable self-defense applies where a person is free from any fault in provoking the attack.

1. *Lynn v. Com.*, 499 S.E.2d 1, 9, 27 Va.App. 336 (Va. App., 1998) (stating "A claim of self-defense may be either justifiable or excusable; if it is either, the accused is entitled to an acquittal. See *Bailey v. Commonwealth*, 200 Va. 92, 96, 104 S.E.2d 28, 31 (1958). "Justifiable homicide in self-defense occurs [when] a person, without any fault on his part in provoking or bringing on the difficulty, kills another under reasonable apprehension of death or great bodily harm to himself." *Id.* (emphasis added). "If an accused 'is even slightly at fault' at creating the difficulty leading to the necessity to kill, 'the killing is not justifiable homicide.'")
2. *McGhee v. Commonwealth*, 219 Va. 560, 562, 248 S.E.2d 808, 810 (1978). (stating "The law of self-defense is the law of necessity.... [A] defendant must reasonably fear death or serious bodily harm to himself at the hands of his victim. It is not essential to the right of self-defense that the danger should in fact exist. If it reasonably appears to a defendant that the danger exists, he has the right to defend against it to the same extent, and under the same rules, as would obtain in case the danger is real. A defendant may always act upon reasonable appearance of danger, and whether the danger is reasonably apparent is always to be determined from the viewpoint of the defendant at the time he acted. These ancient and well-established principles ... emphasize the subjective nature of the defense, and why it is an affirmative one.")
3. *King v. Commonwealth*, 64 Va. App. 580, 586 (2015) (en banc) (quoting *Gaines v. Commonwealth*, 39 Va. App. 562, 568 (2003) (en banc)). However, "if there is evidence in the record to support the defendant's theory of defense, the trial judge may not refuse to grant a proper, proffered instruction." *King*, 64 Va. App. at 587 (quoting *Foster v. Commonwealth*, 13 Va. App. 380, 383 (1991)). . . . The theory, however, must find support in the evidence. "A defendant is entitled to have the jury instructed only on those theories of the case that are supported by [more than a scintilla of] evidence." *Id.*

(alteration in original) (quoting *Eaton v. Commonwealth*, 240 Va. - 5 - 236, 255 (1990)).

“The weight of the credible evidence that will amount to more than a mere scintilla . . . is a matter to be resolved on a case-by-case basis by assessing the evidence in support of a proposition against the ‘other credible evidence that negates’ it.” *Id.* (omission in original).

MALICE

4. As recently as January 20, 2015, the Virginia Court of Appeals addressed “malice” in Willias v. Commonwealth, 64 Va. App. 240 (2015):

Malice is evidenced either when the accused acted with a sedate, deliberate mind, and formed design, or committed a purposeful and cruel act without any or without great provocation.... Malice is implied by law from any deliberate, willful, and cruel act against another, however sudden. Furthermore, “malice may be inferred ‘from the deliberate use of a deadly weapon unless, from all the evidence, there is reasonable doubt as to whether malice existed.’”

STATUTES AND RULES

Heat of passion is determined by the nature and degree of the provocation, and may be founded upon rage, fear, or a combination of both.

Heat of passion excludes malice when that heat of passion arises from provocation that reasonably produces an emotional state of mind such as hot blood, rage, anger, resentment, terror or fear so as to cause one to act on impulse without conscious reflection. Heat of passion must be determined from circumstances as they appeared to defendant, but those circumstances must be such as would have aroused heat of passion in a reasonable person. The defendant has claimed self- defense or defense of another. To show self-defense or defense of another, the defendant need not prove the claim beyond a reasonable doubt, but need only show enough evidence to raise a reasonable doubt as to whether the Commonwealth has proved every element of their case. (*Carol L. Brooks v Commonwealth of Virginia*. Record No. 0106-12-1. Dec 11, 2012. Published.)

Habeas Corpus

A writ of habeas corpus is used as a post-conviction remedy when a person believes laws were illegally applied during the judicial proceedings that resulted in his detention. (Habeas Corpus - Definition, Examples, Cases, Processes (legaldictionary.net))

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 _____; 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 B 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 _____ to the petition and is

[] reported at _____; 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 August 2 (2024)

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

3.

STATEMENT OF THE CASE

1. In Caroline County, Virginia, the Petitioner was charged with maliciously shooting at an occupied motor vehicle in violation of Virginia Code 18.2-154. Circuit Court No. CR 16000081-00.
2. The Petitioner entered a plea of not guilty, and a jury trial was held on November 3, 2016, with Judge Sarah L. Deneke, presiding.
3. At the conclusion of the trial, the jury found the Petitioner guilty of maliciously shooting at an occupied motor vehicle. The jury set the Petitioner's sentence at two years.
4. At the formal sentencing hearing, the court imposed the two year sentence but suspended one year. Thus, the one year sentence was suspended for a period of ten years.
5. The Petitioner appealed to the Court of Appeals of Virginia and to the Virginia Supreme Court. The Court of Appeals denied the Petition for Appeal by orders dated 10/17/17 and 2/16/18, (Record No. 0175-17-2). The Virginia Supreme Court denied the Petition for Appeal by order dated 10/23/18 (Record No. 180383).
6. On May 28, 2019, Petitioner filed a habeas petition in the Caroline County Circuit Court. At the conclusion of the motions hearing, the court granted the motion to dismiss and denied the habeas petition. the final order was entered February 17, 2022, No. CL19-380.
7. The Petitioner appealed the dismissed habeas case to the Virginia Supreme Court, which refused the petition in Record No. 220301 by order dated October 27, 2022.
8. The Petitioner filed a Federal Habeas Petition for a Writ of Habeas Corpus for Prisoner In State Custody filed on April 14, 2023 in the US District Court, Eastern District of Virginia, No. 24-6254. By a memorandum opinion dated February 16, 2024, the district court

denied and dismissed the petition.

9. The Petitioner filed an Informal Brief to the US Court of Appeals for the Fourth Circuit on April 15, 2024. The court denied the appealability and dismissed the appeal on August 2, 2024.

REASONS FOR GRANTING THE PETITION

1. This Court should grant this petition to the Petitioner because of erroneous rulings by the lower courts where they ruled that he maliciously shot into an occupied vehicle.
2. Petitioner, as a passenger, shot into the dash of a car being driven erratically by the driver, Patricia Seaver i.e., speeding down a country road, the driver screaming, "you're not my mother and you can't tell me what to do". Petitioner was afraid for his life as was testified to in the original trial court. The claim that the shooting was not malicious but in self defense and in the heat of passion and that the driver was a kidnapper, refusing to stop the car, and refusing to let him out and petitioner was afraid for his life, was not accepted by the court.
3. Petitioner could have struck the driver with his fist or any other violent action to get her to stop but he did not want to hurt her and he couldn't 'bail out' of the car as it was going in excess of 70 miles per hour on a 55 mile per hour back, country road.
4. Petitioner asks the Court what else he could have done to ensure his and the driver's safety. Similar incidents can occur that will also hold innocent people accountable for the actions taken to escape the vehicle.
5. In the Caroline County, Virginia, Circuit Court trial of November 3, 2016, Fuller was charged with maliciously shooting into an occupied vehicle and denied heat of passion and self defense.
6. Seaver, who was at a Denny's restaurant with Fuller and a friend, talked Fuller into getting into her car to give him a ride. He was waiting for someone else but she told him she'd take him home. She was acting "very sweet" until they drove a few miles down the road. Seaver started driving erratically, speeding and screaming at Fuller.

He was afraid she would drive into a tree and kill them both. He testified to this.

7. Fuller suddenly realized he had pulled his gun and then warned Seaver that if she didn't stop he'd shot into her dash. He now considered her car a weapon. He then shot into her dash and Seaver showed no reaction but kept driving erratically.

8. Fuller then yelled to her, "turn here" and at about 30 miles an hour, she turned onto another side road and into a driveway. Fuller opened the door to escape but she quickly put the car into reverse and sped back onto the road, traveling a good distance backwards. She then drove the car forward and at about 25 miles and hour, Fuller grabbed her key and turned the car off. As it was rolling, she grabbed his hand with both of hers. putting her feet on the floor and pulling as hard as she could.

9. The car slowed enough for him to open the door and roll out. The engine was vapor locked so it took Seaver about three minutes to restart the car and she sped off.

10. This does not meet the requirements of malice, maliciously shooting into a vehicle but it shows self defense against a person who has kidnapped another and using the car as a weapon to do so. This in itself is malice.

11. In view of this, Petitioner requests that this Court grants a Writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: Sept. 26, 2024