

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

IAN WRIGHT

Petitioner,

v.

CHARLES LEE

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SECOND CIRCUIT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

PRO-SE APPELLANT-PETITIONER
IAN WRIGHT #286236
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QUESTION(S) PRESENTED

Mr. Wright alleged that the trial Court's failure to instruct the jury on self defense with regards to the accessorial liability charge violated his right protected by due process. The State Appellate Court affirmed the judgment of the trial court in its opinion concluded that the evidence presented at trial was sufficient to instruct the jury on self defense as to Mr. Wright been the principal, but refused to instruct on a third party's right to use deadly force of another with regard to its charge on accessorial liability. It naturally follows that if Mr. Wright is entitled to an instruction on self defense for himself, he would also be entitled to the same defense and/or instruction from the prospective of a third party with regards to the accessorial liability charge to the jury.

The District Court denied Mr. Wright's Application for Writ of Habeas Corpus, in its memorandum of decision concluded that Mr. Wright did not have a Federal Constitutional right to a jury instruction of self defense from the prospective of a third party's use of force with regards to the accessorial liability charge, concluding that said instruction is a question of state law, and is not reviewable in a federal habeas corpus petition, and thereafter, denied that ground of the petition and refused to issue a certificate of appealability.

Did the Second Circuit err in deffering to the District Court's findings that Mr. Wright did not have a federal Constitutional right to a jury instruction on self defense from the prospective of a third party's use of force with regards to the accessorial liability charge to the jury, and its decision to not issue a certificate of appealability?

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PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES SUPREME COURT

The petitioner, Ian Wright, respectfully prays that a writ of certiorari issue to review decision and/or opinion of the Second Circuit Court of Appeals denial of the certificate of appealability rendered in these proceedings on December 6, 2017.

OPINION BELOW

The Second Circuit Court of Appeals denied the certificate of appealability in its cause No. 17-2458. The opinion is unpublished and is printed in the appendix to this petition at page A32. The order of the Second Circuit Courts of Appeals denying rehearing is reprinted in the appendix to this petition at page A33

JURISDICTION

The original opinion of the Second Circuit Court of Appeals was entered on December 30, 2017. A timely motion to that Court for rehearing and/or rehearing en banc was denied on January 30, 2018.

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

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and Constitutional provisions are involved in this case:

U.S. CONST., AMEND. XIV

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 law.

28 U.S.C. section 2253

28 U.S.C. section 2254

RULE OF APPELLATE PROCEDURE RULE 22

STATEMENT OF THE CASE

Mr. Wright was convicted of murder of Wifredo Sanchez. Before trial the State affirmatively indicated that it would prosecute Mr. Wright as a principal in its information and case-in-chief, Mr. Wright's defense was self defense. On January 30, 2002, prior to closing arguments, the trial Court indicated it would charge the jury on accessorial liability, Mr. Wright thereafter, requested that the Court instruct the jury on self defense from the prospective of a third party David Wright his brother with regards to the accessorial liability charge. The trial Court refused to instructed the jury with regards to self defense from the prospective of a third party with respect to the accessorial liability charge and the jury convicted Mr. Wright of that charge. State v. Wright, 77 Conn. App. 80, 822 A.2d 940 (2003). APP. A27 - A31

His conviction was affirmed on direct appeal, State v. Wright, 77 Conn. App. 80, 822 A.2d 940 (2003), petition for certification to the Connecticut Supreme Court was denied State v. Wright, 266 Conn. 913, 833 A.2d 466 (2003).

Mr. Wright filed a habeas corpus action under 28 U.S.C. section 2254. Relief was denied by the district court APP. A1-A25 and Mr. Wright was denied a certificate of appealability on the issue presented in this petition. APP. A25. The Second Circuit Court of Appeals denied Mr. Wright's certificate of Appealability. APP. A32.

At Mr. Wright's trial witnesses presented the jury with four different versions of how the shooting occurred. Witness Betty Roberson "state witness" testified that she went to the JAP Club the night of the shooting, and there were approximately forty

people present inside the club. Roberson said she saw Williamson a bystander who was shot inside the club with Sanchez. She testified that she began talking to Sanchez at the bar who was carrying a bottle of "henessy" and told her to meet him in the hallway in the bathroom of the club to get high. She met Sanchez in the hallway and they began rolling a marijuana joint.

Roberson further testified that Mr. Wright was also present in the hallway who apparently began to flick the light on and off, which made Sanchez angry, words were exchanged, punches thrown and Mr. Wright and Sanchez began fighting. Mr. Wright and Sanchez end up on the floor wrestling, with Sanchez getting the best of Mr. Wright by "whooping him". As Mr. Wright and Sanchez rose halfway between the hallway floor and a standing position, Mr. Wright back turn towards Roberson, she heard a shot. Roberson testified she did not see who fired the shot or know where it came from.

Williamson "state witness" testified that he did not see who shot him that night of the shooting at the club. He testified that he went to the club and while there went to the rest room and as he exited the rest room saw lights flickering on and off and thereafter, saw two individuals fighting in the hallway. He did not know the individuals fighting in the hallway but heard two or three shots, fell into the bathroom and felt a pain in his leg.

Jim Hamilton "state witness" testified he was a cellmate of Mr. Wright and claim that during their incarceration together, Mr. Wright told him about the night of the shooting. He testified that Mr. Wright told him that, Mr. Wright and his brother were at the club that night, and when Mr. Wright began flicking the light in the hallway on and off Sanchez got angry and started a fight with him. As Mr. Wright and Sanchez struggled over control of a gun it went off and shot Williamson in the leg. Mr. Wright got the gun away from Sanchez and while facing him, shot him in his forehead with that gun.

John Pettway "defense witness" testified that he was a friend of Sanchez and was in the hallway outside the bathroom of the club the night of the shooting. Pettway had seen Mr. Wright's brother in the club on a prior occasion, but did not know his name. Over a year later after the shooting incident while incarcerated for a separate incident, Pettway contacted the Police detective regarding the incident at the club. He was shown two photographic arrays from which he identified Mr. Wright's brother as the shooter that shot Sanchez and testified that Mr. Wright did not have a gun on the night of the incident.

Pettway further testified that as Mr. Wright and his brother left the club he saw the brother waived a gun and told the crowd to "back off". Pettway watched through a window in the club that night and saw someone ran out of the club and fired shots at Mr. Wright and his brother as they left the parking lot in their car.

To determine whether a certificate of appealability should be issued the analysis, the Second Circuit Court of Appeals relied on consideration of the factual or legal bases supporting Mr. Wright's claim, concluding that the State Court of appeals applied the correct legal principles, its decision is not contrary to federal law, and further stated Mr. Wright did not cite[and the Court have not found] any Supreme Court case that held a defendant's federal constitutional right are violated by a state trial court's refusal, in connection with a charge of accessory to murder, to instruct the jury on the affirmative defense of use of force by a principal in defense of others. APP. A13. Base on that conclusion, the Second Circuit denied Mr. Wright's certificate of appealability after he has demonstrated that jurists of reason could disagree with district court's resolution of the case and that the issue presented was adequate to deserve encouragement to proceed further.

REASONS FOR GRANTING THE WRIT

1. THE SECOND CIRCUIT'S MISAPPLICATION OF THE CERTIFICATE OF APPEALABILITY STANDARD OF MILLER-EL V. COCKRELL WARRANTS THIS COURT'S ATTENTION

The Second Circuit's opinion misapplied the Miller-El v. Cockrell, 537 U.S. 322, 327 (2003), test for demonstration that jurists of reason could disagree with the district court's resolution of the case or that the issue presented was adequate to deserve encouragement to proceed further.

The Court requires, in making the analysis under Miller-El v. Cockrell, that the reviewing court inquiry does not require full consideration of the factual or legal bases supporting the claim, consistent with this Court's precedent and the statutory text, Mr. Wright need only demonstrate "a substantial showing of the denial of a constitutional right. Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); Slack v. McDaniel, 529 U.S. 473, 483, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000); Buck v. Davis, 580 U.S. ____ 137 S.Ct. 759, 197 L.Ed.2d 1 (2017).

Under this test, it is inappropriate in considering whether a certificate of appealability should issue following the denial of habeas relief to a petition, and denial of a COA by the district court by considering the factual or legal bases supporting the claim. Mr. Wright needs only to demonstrate "a substantial showing of the denial of a Constitutional right".

Mr. Wright has a Constitutional right protected by due process to accurate jury instruction in State Court on matters of State Law and which is guaranteed to him by Federal Law.

It is not the province of a federal habeas court to reexamine state-court determinations of State Law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, law, or Treaties of the

United States. Estelle v. McGuire, 502 U.S. 62, 76-68, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991).

Where an error in a jury instruction is alleged, "it must be established not merely that the instruction is undesirable, erroneous, or even 'universally condemned', but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment. See Cupp v. Naughten, 414 U.S. 141, 146, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973).

The question is not whether the trial court gave a faulty instruction, but rather "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process". Id. at 147, 94 S.Ct. 396; see also Estelle, 502 U.S. at 72, 112 S.Ct. 475 (quoting and reaffirming Cupp).

A finding that Mr. Wright was erroneously deprived of a jury instruction to which he was entitled under state law is the "first step" in the determination whether that error violated Wright's federal due process rights. See Davis v. Strack, 270 F.3d 111, 123 (2nd Cir. 2001); Jackson v. Edwards, 404 F.3d 612 (2nd Cir. 2005); see also State v. Montanez, 277 Conn. 735, 894 A.2d 928 (2006). Mr. Wright's justification defense charge to the jury was warranted under Conn. Gen. Stat. sec. 53-19, if on any reasonable view of the evidence presented at trial, the fact finder might have decided that Wright's brother actions were justified.

The "second step" would be, if so did the failure to give the requested instruction violated the standard set out in Cupp. The failure of the trial court to give the requested justification defense instruction to the jury with respect to the accessorial liability charge, violated Mr. Wright's due process rights, the omission was nothing less than "catastrophic", because it left Wright without a defense for the accessorial liability charge to which he was convicted.

The evidence presented at trial would have allowed the jury to conclude that Mr. Wright brother acted justifiable to protect him, and thus, to acquit Mr. Wright of the accessorial liability charge. However, in the face of the evidence, the jury could not acquit Mr. Wright without having been instructed on the proper justification defense. See United States v. Jones, 16 F.3d 487, 493 (2nd Cir. 1994).

The "third step" is, if so, did the court's contrary conclusion constitute an unreasonable application of clear Supreme Court law. See 28 U.S.C. sec. 2254. The failure of the trial court to instruct the jury on Mr. Wright's requested justification defense with respect to the accessorial liability charge, "infected the entire trial that the resulting conviction on the accessory to murder violated Wright's due process rights. That contrary conclusion constitute an unreasonable application of clear Supreme Court law as determined under Cupp v. Naughten, The district court's decision was based on an unreasonable determination of the facts in light of the evidence presented in state court proceedings, as the trial court instructed the jury on self defense base on Mr. Wright's use of force, it naturally follows then if Mr. Wright was entitled to a charge regarding said defense to the jury for himself, he would also be entitled to the same charge from the prospective of a third party shooter, in this case his brother. Cupp, 414 U.S.; see also 28 U.S.C. sec. 2254(c)(1) and 28 U.S.C. sec. 2254(d)(2),

Inexplicably, the district court went on to conclude, "wright has not cited (and I have not found) any Supreme Court case that held a defendant's federal constitutional rights are violated by a state trial court's refusal, in connection with a charge of accessory to murder, to instruct the jury on the affirmative defense of use of force by a principal in defense of others. APP. A13. However, Mr. Wright's habeas briefs presented to the district court in support of his application cited Cupp v. Naughten,. See also Ruling on Petition

for Writ of Habeas Corpus APP. A11; and A12.

The phrase "clearly established federal law, as determined by the Supreme Court of the United States" refers to holdings as opposed to dicta, of the Supreme Court's decisions as of time of relevant State Court decision. Williams v. Taylor, 529 U.S. 362 (2000). The holding of the Supreme Court's decision of Cupp v. Naughten, as of time of relevant State Court decision of Mr Wright's case, held that "whether the ailing instruction of the trial court's omission to instruct the jury on Wright's requested justification defense with regards to the accessorial liability charge, by itself so infected the entire trial that the resulting conviction violated due process".

Congress, in 28 U.S.C. sec. 2253, mandated that a state prisoner seeking habeas corpus relief under 28 U.S.C. 2254 had no automatic right to appeal District Court's denial of such relief instead, such prisoner first had to seek and obtain a certificate of appealability (COA). Also, under 28 U.S.C. sec. 2253(c)(2), a prisoner seeking a COA had to demonstrate a substantial showing of the denial of a federal constitutional right.

Mr. Wright had a right protected by due process of the Fourteenth Amendment to the Constitution of the United States to proper jury instruction on his requested justification defense which he was denied by the trial Court. See Cupp v. Naughten,

Under 28 U.S.C. sec. 2253 (c)(1) if the District Court deny a prisoner request for a COA an appeal may not be taken unless the circuit justice or judge issue a certificate of appealability. Also see Rules of Appellate Procedure Rule 22

Mr. Wright's federal habeas corpus claim was that the trial court's failure to instruct the jury on his requested justification defense of self defense from the prospective of a third party's use of force with respect to the accessorial liability charge, violated due process as determined under Cupp v. Naughten, -in that the trial court's faulty and/or ailing instruction by itself so infected the entire trial that

resulted in his conviction of accessory to murder. The Second Circuit Court of Appeals should have granted Mr. Wright's certificate of appealability and should have reviewed Wright's claim on the merits, following the district court's failure and/or refusal to issue a COA.

The district court's decision regarding the factual or legal bases supporting Mr. Wright's claim do not require the attention of this Court. What does merits review is the emerging practice of the Second Circuit in denying prisoners request for a certificate of appealability. This was precisely the type of review that this Court condemned in Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); also see Buck v. Davis, 580 U.S. ____, 137 S.Ct. 759, 197 L.Ed.2d 1 (2017).

Because the Second Circuit Court of Appeals has truncated the scope of Miller-El v. Cockrell, 537 U.S. 322, 327 (2003), determination concerning review of certificate of appealability, this Court must grant certiorari.

**II, THE DECISION OF THE SECOND CIRCUIT IS IN CONFLICT
WITH THE DECISIONS OF ITS OWN CIRCUIT**

In the closely analogous cases of Davis v. Strack, 270 F.3d 111, 123 (2nd Cir. 2001) and Jackson v. Edwards, 404 F.3d 612 (2nd Cir. 2005), the Court confronted a situation where State Trial Court's failure to give justification charge to the jury deprived those defendants of their due process rights to a fair trial under Federal Constitutionlike Mr. Wright.

The Second Circuit affirmed the district court's decision in Jackson v. Edwards, 404 F.3d 612 (2nd Cir. 2005), that granted relief to that petitioner, and reversed the district court's decision in Davis v. Strack, 270 F.3d 111, 123 (2nd Cir. 2001), that denied relief to that petitioner, and held that the trial courts' failure to

instruct the jury on the defense of justification infected those defendants convictions and deprived them of their right to due process to a fair trial under Federal Law as determined under Cupp v. Naughten, 414 U.S. 141, 147, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973).

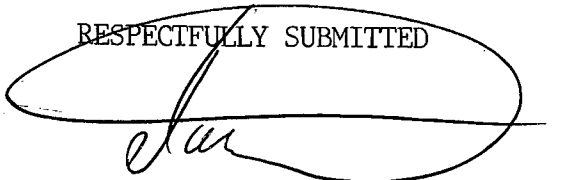
These cases illustrate the fact that the Second Circuit Court of Appeals is out of step with its own Court in its consideration of the Miller-El v. Cockrell, 537 U.S. 322, 327 (2003), review standard when it denied Mr. Wright certificate of appealability.

Certiorari should be granted to correct this error.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and/or decision of the Second Circuit Court of Appeals.

RESPECTFULLY SUBMITTED



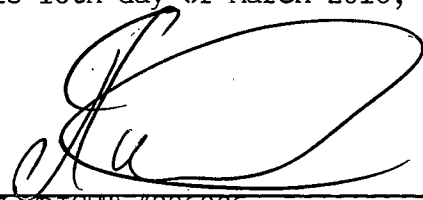
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CERTIFICATION

I hereby certify that a copy of the Petition for Writ of Certiorari and Motion for leave to proceed in forma Pauperis was sent this 16th day of March 2018, to;

Jo Anne Sulik
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BY



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