

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANTWAIN
WILLIAMS - PRO PERSE — PETITIONER
(Your Name)

THE PEOPLE - OF THE ^{VS.}
STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS, SECOND APPELLATE DISTRICT, DIVISION
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) FIVE

PETITION FOR WRIT OF CERTIORARI

Antwain Williams - BB6055
(Your Name)

B7-208, P.O. Box 7500
(Address)

Crescent City, CA 95532
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) Does the failure to instruct on a lesser-included-offense requested by petitioner, when evidence fairly tending to bear upon the issue is presented, show prejudice to petitioner; relieve, lessen, or shift the "States" burden of proof on the critical question of the petitioner's state of mind?

2.) When "proof beyond a reasonable doubt" was not the direct issue, what standard of proof does the [state] court apply in making the determination of materiality and/or evidence, upon the refusal to submit "requested" instructions to the jury violate the presumption of correction clause?

3.) Whether the failure to instruct or submit questions of law to the jury, pertinent to the issue of the case, deny the petitioner "United States Constitutional rights" (e.g., rights to present a defense, to have an impartial judge, to an impartial jury, and a fair trial)?

4.) How can the jury remain impartial to render a complete verdict, if they don't have the properly required law in the instructions given, to determine proof beyond a reasonable doubt every element of the crime charged?

5.) Whether instructional errors in the petitioner case, like the failure to instruct on a lesser-included-offense, "reversible per se"?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page.. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

THE PEOPLE OF THE STATE OF CALIFORNIA

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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 _____ 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 _____ 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 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 _____ 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 _____.

☐ 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 Nov. 29, 2017.
A copy of that decision appears at Appendix A.

☐ 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).

1 CONSTITUTIONAL AND STATUTORY
2 PROVISIONS INVOLVED
3

4 The Fifth Amendment of the United States Constitution

5 See Appendix D

6 The Sixth Amendment of the United States Constitution

7 See Appendix D

8 The Fourteenth Amendment of the United States Constitution

9 See Appendix D

10 Article VI, clause 2 of the United States Constitution

11 See Appendix D
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STATEMENT OF THE CASE 1./

The petitioner Antwain Williams was charged by information in counts one through six with attempted premeditated murder (Cal. Penal Code § 187/§ 664), and in count seven with shooting at an inhabited dwelling. (CT 89-92) It was further alleged as to counts one through six that, during the commission of the offenses, petitioner had personally used a firearm within the meanings of section 12022.53 of the Penal Code and that he personally and intentionally discharged it.

A jury trial began on August 19, 2016. (CT 112) On August 29, 2016, petitioner was acquitted of the attempted murders alleged in counts one, and three through six; he was convicted of attempted premeditated murder as alleged in count two and of shooting at an inhabited dwelling as alleged in count seven. (6 RT 1802-1805; CT 194-207, 209-210) The jury found true both firearm allegations as to count two. (6 RT 1803; CT 195, 210)

At a sentencing hearing on November 9, 2016, petitioner was sentenced to 27 years to life, consisting of 7 years to life for count two, plus twenty years for section 12022.53

1. // It is noteworthy to pause here for a moment, and point out that petitioner merely adopts the facts as stated; to edify this Honorable Court as they unfold in the trial court, to which are not intended to be misconstrued as any admission of guilt. As petitioner maintains his factual innocence, and continues to assert his rights on those grounds.

1 enhancement; the upper term of seven years on count seven was
2 stayed and ordered to run concurrently. (6RT 3306-3307; 3312;
3 CT 238, 240) A timely notice of appeal was filed on November
4 10, 2016 (CT 244)

5 The petitioner and Evetta Smith have been in a
6 relationship since 2007. (5RT 923) They have a child
7 together, Inga Leilani Williams, and all three of them
8 lived together in San Bernardino, CA. (5RT 923-924) On April
9 25, 2016, Evetta Smith had been visiting with a friend in
10 the city of Long Beach, CA, for about three weeks, while
11 taking their loving child to medical appointments in the area,
12 which is why Smith also was looking for place in the area, while
13 she was visiting, so all three of them can be closer to the child
14 medical doctors. (5RT 959, 924, 961) The petitioner where
15 abouts was unknown on the day of the shooting and the last
16 time petitioner was at the "friend apartment" in Long Beach,
17 was a month before, when he dropped Smith and their child off
18 and picked them up; it's unknown if the petitioner ever been inside
19 the actual apartment of the friend in Long Beach. (5RT 925, 931,
20 974)

21 Earlier in the day on April 25, 2016, Evetta Smith and
22 the petitioner was on the phone talking when Smith told the
23 petitioner to come to the city of Long Beach and spend a night.
24 (5RT 932-933) The conversation between the two of them
25 was good until later that night, when Smith noticed the
26 petitioner mood had changed. (5RT 932-933) An argument
27 then begun and both the petitioner and Evetta Smith started
28 hanging up on each other. (5RT 935) The arguments escalated

over the course of the evening; the petitioner called Smith a liar, a bitch, and accused her of cheating on him by committing adultery. (SRT 934, 935, 961, 1041) The petitioner then started making threats to kick in the door and fuck her up. (SRT 935) After petitioner made these threats, the arguments continued, although Smith keep cutting the petitioner off everytime he tried to speak, continuously while asking him to calm down and why was he so mad, even though she noticed the petitioner was getting angrier and more angrier with the situation. (SRT 935) (SRT 1056) Petitioner also during the course of these arguments to Smith to just come outside, then later said, "watch what happens when you come outside," but in disbelief, Evette never went outside and never looked outside (SRT 964-965) Evette Smith has legal custody of their child and when her and the petitioner argue about their child, he has a short fuse and threaten to get split custody to have more access to his child. (SRT 960-961, 977) Evette Smith Mother Inga James observes Evette relationship with the petitioner and notice they both have jealousy issues (SRT 1055) Evette Smith Brother Kevin and Bryan, age 14 and 15 years old, was also both victims and witnesses. (SRT 985, 1004) Bryan told the jury Marcus Delgado, which is the son of Glenda Sandoval (who lives in apartment 10A; directly under Evette Smith Friend apartment who police interviewed) lived in the apartment with the "Friend," along with several others (who all are around Evette Smith age) in apartment 20A. (SRT 930) Evette Smith Brother Kevin told juries, Evette Smith was a "couch surfer" who went from place to place and stayed out often, all night when she was staying in Long Beach for those three weeks. (SRT 1009)

1 When Defense Counsel Ms. Lui, tried to ask Evetta Smith, has she
2 ever cheated on the petitioner with people at that location, the
3 prosecution quickly objected and the trial judge sustained the
4 question; so, Evetta Smith Never admitted and Never denied
5 having an affair with the petitioner. (5 RT 967) One to two
6 years before the shooting, the petitioner and Evetta Smith got
7 in an argument and when Evetta Smith threatened to take the
8 child and leave the petitioner, the petitioner pulled out a gun
9 and put a clip in it and told her, "he could end it right now."
10 (5 RT 937, 938; 6 RT 1307) Evetta Smith remained with the petitioner
11 and did not report the incident to police. (5 RT 938)

12 At an unknown time after the petitioner and Evetta
13 Smith ended their phone arguments, Evetta and Company, in the
14 living room of the "Friend" apartment in Long Beach, heard a loud
15 bang coming from the public hallway, outside the front door,
16 (5 RT 939-940, 988) Evetta and Inga James got up to
17 investigate the noise; Evetta took a quick peek thru the peephole
18 of the front door, without her glasses on which she is prescribed,
19 then turned towards her mother Inga James and said "its him!"
20 (5 RT 940, 941, 965) Inga James then responded by directly
21 asking, "Antwain", but Evetta Smith never answered as she ran
22 down the hallway, to alert her "Friend" someone was at the door
23 and she didn't know what was going on (5 RT 942, 964-967)
24 Nobody else looked thru the peephole and soon after, shoots begun
25 as Evetta Smith started heading back to the living room, a
26 bullet came thru the wall and almost hit her as she ducked
27 and soon blacked out (5 RT 942-943) Afterwards, Evetta
28 Smith got up and called 911 and told the operator, "she needed

1 help, someone just shot up the place, and began to describe who
2 she believed to be on the other side of the door and shooter, "A
3 Big dude, light-skinned; then said it was her baby daddy,
4 Antwain Williams, the petitioner and that he's driving a grey
5 car. (5RT 945) Now, Evetta Smith admitted at both prelim
6 and trial, that she was unable to tell who she saw thru the
7 peephole and only assumed it was the petitioner when she called
8 9-1-1 because of the arguments and which he claimed to be
9 outside "and she didn't know what to believe" (5RT 939-940, 988;
10 CT 54) (5RT 964-965) Evetta Smith also admitted she couldn't
11 see who the person on the other side of the door because his face
12 was covered and she didn't have her glasses on. (5RT 975, 954; CT
13 54) AT trial, Evetta Smith couldn't see some of the pictures of
14 evidence like other did, because she didn't have on her glasses,
15 so it was blurry. (5RT 950-951) Within those three weeks, Evetta
16 Smith would either sleep in the living room or the bedroom when
17 she visited her friend in Long Beach. (5RT 971) Evetta Smith never
18 told the petitioner where she was at, exactly on April 25, 2016,
19 and never told the petitioner that people was around her at
20 as well as the apartment she was in that day (5RT 974, 973)

21 The only other witness besides Evetta Smith family, was
22 Dante Miller, from the petitioner family, who has a mental
23 disability for schizophrenia and was taking penicillin, tylenols,
24 and two other pills, is on social security for his mental health
25 disabilities (6RT 1260-1261) Due to these medical conditions, Dante
26 was unable to recall the dates to the events he was describing. (6RT 1260)

27 Long Beach Police officers poorly investigated the crime, was
28 admitted by Detective Adrain Garcia; who stated also officers failed

1 to measure evidence correctly, didn't take quality pictures for evidence,
2 No GSR (Gun Shot Residue) testing done at all; the trajectory of
3 the bullets and analysis of the bullets and shells wasn't done either and
4 police was unable to find any video surveillance (6RT 1208-1248) (6RT
5 1318-1319). Detective Garcia, during the interview the day after
6 the crime charged, Detective Garcia never directly asked who was
7 the shooter and unduly suggested the shooter was the petitioner, by
8 showing Evetta Smith a single DMV photo and only asking her who
9 was the person in the picture (5RT 1064-1065; 6RT 1300)

10 A search was authorized instead of an arrest warrant, and
11 the petitioner was arrested before the search, at his place of employ-
12 -ment, BSNF Railway on August 28, 2016, (6RT 1317). During
13 the search of the petitioner home, three Black sweaters (Hoodies)
14 was found and police collected it for evidence and impounded the
15 family vehicle, and documented the petitioner room was set up for
16 the loving child with all sorts of baby items. (6RT 1293, 1292)

17 Evetta Smith was recalled the next day of trial to
18 testify about the 9-1-1 call, Detective Interview, and
19 Jail calls between her in the petitioner; in which only purpose
20 was to impeach Evetta Smith heavily for her "Identification"
21 of the alleged shooter who she never saw, by claiming she was
22 willfully false and that the petitioner told her to lie allegedly.
23 (6RT 1309, 1296-1311) All Evidence in the record she Evetta
24 Smith as having a basic consistent story from police interviews,
25 to prelim, and at trial (CT 41-63; 5RT 923-988; 6T 1296-1311)

26 The judge on the other hand, made a lot of instructional
27 errors and misstated the law frequently; admitting
28 her errors at the end of trial; but still mis-instructed the

1 the jury on malice (6 RT 1511, 1518) (See also, Appendix E)
2 On Direct appeal, the court of appeals still affirmed the judgement
3 and stated the error was harmless; even after the District Attorney
4 on the last page of the respondent brief, stated there was evidence
5 to support Heat of passion instructions, but it was weak compared to
6 other overwhelming evidence. (See Appendix A) (Respondent Brief last page)
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REASONS FOR GRANTING THE PETITION

The trial judge failure to instruct the jury on a lesser-included-offense upon request by defense counsel, violated the petitioners' Fifth, Sixth, and Fourteenth Amendments rights to the United States Constitution; amounts to a federal constitutional error which "structural defect affecting the framework within the trial proceeds" (e.g., total deprivation of the trial judge who was not impartial in refusal to instructions requested by defense counsel, which were supported by evidence) is considered "prejudicial per se" and thus, always require reversal. See, Arizona v. Fulminante, 499 U.S. 279, 309, 113 L. Ed 2d 302, 111 S. Ct 1246 (1991). California Penal Code § 1159 and Rule 31(c) of the Federal Rules of Criminal Procedures, states, in pertinent part, a defendant may be found guilty of any offense that is necessarily included within the statutory definition of the offense which he is charged. See, Stevenson v. United States, 162 U.S. 313, 40 L. Ed 980, 16 S. Ct 839 (1896); Berra v. United States, 351 U.S. 131, 134 n.6, 100 L. Ed 1013, 76 S. Ct 685 (1956); Sansone v. United States, 380 U.S. 343, 349, 13 L. Ed 2d 882 (1965). California Penal Code § 1093(f) states, in pertinent part, it is the duty of the court to instruct the jury on all questions, pertinent to the issue, upon which either party may request the direction of the court. See, Spart v. United States, 156 U.S. 51, 79-80, 39 L. Ed 343, 15 S. Ct 273 (1895); see also, Rule 30 of the Federal Rules of criminal procedures.

Under the Fifth Amendment of the United States Constitution, the prosecution must prove every element of a criminal offense beyond a reasonable doubt. See, Patterson v. New York, 432 U.S. 197, 210, 53 L. Ed 2d 281, 97 S. Ct 2319 (1977); Carroll v. California, 491 U.S. 263,

1 265-266, 105 L. Ed 2d 218, 109 S. Ct 2419 (1989). Under the Sixth
2 Amendment right to an impartial jury and the Fourteenth Amendment
3 right to due process, taken together, requires every element of a
4 criminal offense to be proved beyond a reasonable doubt by an impartial
5 jury. See, Appendi v. New Jersey, 530 U.S. 466, 476, 147 L. Ed 2d
6 435, 120 S. Ct 2348 (2000); Sullivan v. Louisiana, 508 U.S. 275, 277,
7 124 L. Ed 2d 182, 113 S. Ct 2078 (1993). Accordingly, when malice is an
8 element of murder and heat of passion or sudden provocation is put in
9 issue, the Federal Due Process requires the prosecution to prove its
10 "absence" beyond a reasonable doubt. See, Mullaney v. Wilbur, 421
11 U.S. 684, 704, 44 L. Ed 2d 508, 95 S. Ct 1881 (1975). The absence of
12 malice distinguishes manslaughter from murder. See, California Penal Code
13 §§ 187, 192(a). The failure to instruct the jury on the potential effect
14 of provocation and heat of passion (requested by petitioner) to negate
15 malice, prevented the jury the Full Legal definition of provocation and
16 heat of passion to reduce 1st degree Attempted Murder to 2nd degree
17 Attempted Murder or Attempted Voluntary Manslaughter, was prejudicial
18 to the petitioner by relieving the prosecutions burden to prove malice
19 beyond a reasonable doubt by proving the "absence" of provocation and
20 heat of passion or sudden quarrel beyond a reasonable doubt. See, Rose
21 v. Clark, 478 U.S. 570, 578, 92 L. Ed 2d 460, 106 S. Ct 3101 (1986).
22 Especially, Since a substantial amount of evidence was introduced at
23 trial for a reasonable rational jury to have convicted the petitioner of
24 the lesser-included-offense and acquitted him of the greater; the
25 petitioner was denied Federal Constitutional rights that entitled him to
26 those instructions of the lesser-included-offense requested at trial. See,
27 Stevenson v. United States, *supra*, 162 U.S. at p. 323; Keeble v. United States,
28 412 U.S. 205, 208, 36 L. Ed 2d 844, 93 S. Ct 1993 (1973); Mathews v.

1 United States, 485 U.S. 58, 63, 99 L. Ed. 2d 54, 108 S. Ct 883 (1988).

2 In evaluating "a trial court's decision not to give a requested
3 instruction on provocation and heat of passion, the reviewing court
4 [was suppose to] examine the whole evidence on the record and draw
5 those inferences as can reasonably be drawn therefrom, determining
6 whether proof taken in light most favorable to the petitioner, can plausibly
7 support the theory of the lesser-included-offense." See, United States v.
8 Baird, 712 F. 3d 623, 627 (1st Cir. 2013) (alterations added). Therefore, if
9 evidence existed, the reviewing court -- the Court of Appeals -- "can not
10 say that the availability of an option to convict of a lesser-included-
11 offense, would not have resulted in a different verdict." See, United
12 States v. Grant, 489 F. 2d 27, 31 (8th Cir. 1973); see also, Spart v. United
13 States, *supra*, 156 U.S. at p. 93. Accordingly, since such a decision to
14 refuse requested instructions in the petitioner's case, "had substantial and
15 injurious effect or influence in determining the jury verdict," reversal is
16 required. See, Brecht v. Abrahamson, 507 U.S. 619, 627, 123 L. Ed. 2d
17 353, 113 S. Ct 1710 (1993).

18 In *Stevenson* (italics added):

19 the United States Supreme Court long established that "the
20 evidence might appear to the court to be simply overwhelming
21 to show that the killing was in fact murder, and not manslaughter
22 or an act performed in self-defense, and yet, so long as there
23 was some evidence relevant to the issue of manslaughter,
24 the credibility and force of such evidence must be for the
25 jury, and cannot be matter of law for the decision of
26 the court." See, Stevenson v. United States, *supra*, 162
27 U.S. at p. 315; see also, California Penal Code § 1124.

28 Rule 401 of the Federal Rules of Evidence and the California Evidence

1 Code § 210, states, in pertinent part, relevant evidence is evidence
2 relevant if it has any tendency to make a fact more probable or
3 less probable than it would be without the evidence. Evidence of prior
4 acts are relevant alone, to an issue in such cases, to warrant such
5 instructions. See, Estelle v. McGuire, 502 U.S. 62, 69, 116 L. Ed 2d
6 385, 112 S. Ct 475 (1991). Whether there be any evidence or not, is
7 a question for the judge; whether it is sufficient evidence, is a
8 question for the jury. See, Spart v. United States, supra, 156 U.S. at
9 p. 87; see also, California Penal Code § 1126. The petitioner contends
10 he was entitled to the requested instructions "[i]n light of the low
11 evidentiary threshold [the petitioner] must clear," since only "slight
12 evidence will create the factual issue necessary to get the defense to
13 the jury, even though such evidence may be weak, inconsistent, or
14 of doubtful credibility." See, Keeble v. United States, supra, 412 U.S.
15 at p. 213; United States v. Becerra, 992 F.2d 960, 963 (9th Cir. 1993).

16 The United States Supreme Courts have interpreted the standard
17 of fairness to require that criminal defendants be afforded a
18 meaningful opportunity to present a "complete defense." See,
19 California v. Trombetta, 467 U.S. 479, 485, 81 L. Ed 2d 413, 104
20 S. Ct 2525 (1984). The petitioner contends he is "entitled to an
21 instruction as to any recognized defense for which there exist
22 evidence sufficient for a reasonable jury to find in his favor." See,
23 Stevenson v. United States, supra, 162 U.S. at p. 313; Keeble v. United
24 States, supra, 412 U.S. at p. 208; Mathews v. United States, supra, 485
25 U.S. at p. 63. This is so because, the right to present a defense, would
26 be empty if it did not entail the further right to an instruction that
27 allowed the jury to consider the defense. See, Bradley v. Duncan,
28 315 F.3d 1091, 1099 (9th Cir 2007) (quoting, Tyson v. Trigg, 50 F.3d

1 436, 448 (7th Cir. 1995)). Especially, since the petitioner's 1st degree and
2 2nd degree Attempted Murder, was not explained to the jury and was
3 not clear by the instructions [nor verdict forms, on the difference] given.
4 See, Adam v. Murphy, 653 F.2d 224 (1981) (alterations added).

5 The petitioner contends the courts refusal to instruct the jury on
6 a lesser-included offense instruction was reversible because the record
7 contains "evidence fairly tending to bear upon the issue." See, Guam v.
8 Fejeran, 687 F.2d 302, 305-307 (9th Cir. 1982). The evidence relied
9 upon by the petitioner is as follows:

- 10 (1) the witness/victim testimony telling the petitioner "to just come and
11 we will go to the doctors together," then later explains her alleged dis-
12 belief in the petitioner allegedly outside the apartment building telling
13 her "to come outside," followed later by multiple phone calls of the
14 petitioner accusing her of "Cheating on him as being the reason she
15 did not come outside;
- 16 (2) thus, making the petitioner angrier and angrier on top of already
17 being influence by emotional provocation from either actually witnessing
18 such adultery acts or just the reasonable erroneous belief on the
19 part of the petitioner that she was or had committed adultery,
20 combined with the progressive arguments and denial of the petitioner
21 child (which has a lot of medical complications);
- 22 (3) the other witnesses statements of the petitioner being jealous
23 combined with the statement of someone with a child with medical
24 complications being a "couch surfer" and staying out the whole night
25 with friends;
- 26 (4) Being away from his child who has complications for about three weeks,
27 with the other parent who he disbelieve is fit to take care of the child,
28 denying access to that child, possible up to about three weeks

1 - supported a foundation, for the jury, if instructed on the lesser-
2 included-offense, to convict the petitioner of the lesser-included-offense
3 or put in their minds, a reasonable doubt towards the petitioner's guilt,
4 resulting in an acquittal. [citations omitted]. The "Average Person" need not
5 have been provoked to kill, just to act rashly and without deliberation.
6 See, People v. Beltran (2013) 56 Cal. 4th 935, 938, 942, 957; People v. Majors
7 (2006) 138 Cal. App. 4th 212, 223. Although, provocation has also been
8 found sufficient, based on the infidelity of a lover. See, People v. Borchers
9 (1958) 50 Cal. 2d 321, 328-329. For the [state] courts to overlook
10 such evidence by, "viewing other evidence of intent as overwhelming,
11 is then simply irrelevant." See, Bollenback v. United States, 326 U.S.
12 607, 614-615, 90 L. Ed 350, 66 S. Ct 402 (1946).

13 "[A] court commits plain error when it fails to provide such
14 an instruction where the issue is properly presented." See, United States
15 v. Lofton, 776 F. 2d 918, 922 (10th Cir 1985). Such plain error
16 applies to the court which suppose to look at the evidence as a whole
17 and the instructions in the petitioner's case, as well as how the trial
18 proceeds from such error, to require reversal. See, Rule 52 (b) of the
19 Federal Rules of Criminal Procedures. The [state] courts views are
20 without merit; in the Slip opinion from the Court of Appeals, the
21 decision turned on facts and unwarranted inferences not in records;
22 a clear misunderstanding of the facts, as well as the law. Ibid. The
23 courts can not declare a policy different from that fixed by the
24 Legislature. See, United States Constitution (U.S.C.) Article (Art) VI,
25 Clause two; see also, U.S.C. Art. III, section 2, clause 3. It's only
26 when a jury has been properly instructed as to the relevant
27 standards to be applied to the evidence, does a basis ~~ver~~ exist for
28 determining whether evidence is sufficient to support the verdict

1 presented in the petitioner's case. See, Bollenback v. United States,
2 326 U.S. at p. 613-615. Thus, the Court of Appeals failed to apply
3 the proper harmless-error standard, as stated in Chapman v.
4 California, 386 U.S. 18, 24, 17 L. Ed 2d 705, 87 S. Ct 821 (1967),
5 which held that an error is harmless if it appears "beyond a reasonable
6 doubt" that the error complained of did not contribute to the verdict
7 obtained. An error does "not contribute to a verdict" only if it is
8 unimportant in relation to everything else the jury considered on the
9 issue in question, as revealed in the records. See, Yates v. Evatt, 500
10 U.S. 391, 114 L. Ed 2d 432, 111 S. Ct 1884 (1991). The Court of Appeals
11 deficient standard applied is contrary to Federal Constitutional laws,
12 because "the question is not whether guilt may be spelt out of the
13 record, but whether guilt has been found by a jury according to
14 the procedure and standards appropriate for criminal trials." See,
15 Yates v. Evatt, supra, 500 U.S. at p. 414; Bollenback v. United States,
16 supra, 326 U.S. at p. 614. Given the nature of the instructions
17 [requested] here, then, to determine from the "entire record" that
18 the error is "harmless" would be to answer a purely hypothetical question,
19 ... whether, if the jury had been instructed correctly, it would have
20 found that the state proved the existence of malice beyond a
21 reasonable doubt. Ibid. In answering this question, a court does not
22 conduct a subjective ~~equ~~ enquiry into the juror minds; the answer
23 must come, instead, from analysis of the instructions given to the
24 jurors. Id at p. 404. The trial judge charged the jury that
25 malice may be express or implied states, in pertinent part, ... by
26 intentional doing an unlawful act, (malice can be express), which is
27 an instructional error of itself. See, Jury ~~int~~ instructions in Appendix E.
28 Therefore, the petitioner contends, inter alia, the overall jury instructions

1 changed, absent the petitioner's defensive instructions requested, allowed
2 the jury to convict the petitioner on implied malice instead of
3 findings of Express malice," is one of those instructional errors [that
4 is] so serious that [it] amounts to [a] structural defect, which
5 def[ies] analysis by harmless-error standards. See, Suniga v
6 Bunnell, 998 F. 2d 664, 667 (1993).

7 In conclusion, the most an appellate court can conclude
8 is that a jury would surely have found petitioner guilty beyond a
9 reasonable doubt, not that the jury's actual findings of guilt beyond
10 a reasonable doubt would surely not have been different absent the
11 constitutional error, that is not enough. See, Yates v. Evatt, supra,
12 500 U.S. at pp. 413-414. The failure to give requested instructions is error.
13 See, United States v. Comer, 421 F. 2d 1149 (D.C. Cir. 1970). Attempted
14 Voluntary Manslaughter is a lesser-included-offense when "testimony
15 evidence adduced at trial entitled the petitioner to requested instructions
16 because they were substantively correct, not covered substantively
17 elsewhere in the charged instructions to the jury, and concerned a
18 sufficiently important point on the issue in the petitioner's trial, that
19 the refusal to submit such questions of law to the jury, seriously impaired
20 the petitioner's ability to present his defense and denied him rights
21 to an impartial jury." See, United States v. Baird, supra, 712 F. 2d at
22 p. 628. Reversal is not required because of a reasonable probability
23 that in the absence of the error, the jury would have reached a different
24 verdict, but because the petitioner has a constitutional right to have
25 the jury determine every material issue presented by the evidence. See,
26 People v. Modesto (1963) 59 Cal. 2d 722, 730. Where "an instruction
27 on intent" when read in context of the jury charge as a whole, violated
28 the Fourteenth Amendment of due process, requiring that the State

1 prove every element of a criminal offense beyond a reasonable doubt,
2 by relieving the states burden of proof of the essential element in
3 the crime charged. See, Francis v. Franklin, 471 U.S. 307, 85 L. Ed
4 2d 344, 105 S. Ct 1965 (1985). Accordingly, the recognition of the
5 Fifth, Sixth, and Fourteenth Amendments of the Federal Constitution
6 procedural values, "is an integral part of the basis for all
7 considerations of relief for this writ of certiorari to be granted"
8 with directions to reverse and order New trial. See, Townsend v.
9 Sain, 372 U.S. 293, 312, 9 L. Ed 2d 770, 83 S. Ct 745 (1963).

PRAYOR

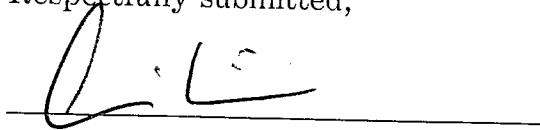
To the Honorable Judges in this court, the petitioner pray for this writ of certiorari, there of within, be granted to serve our judicial economy where conflicts with courts, was not intended by our great Legislatures.

CONCLUSION

The petition for a writ of certiorari should be granted.

Antwan Williams pro se, BB658

Respectfully submitted,

A handwritten signature, likely of Antwan Williams, written in black ink. The signature is stylized and appears to be "A. Williams". It is written above a horizontal line.

Date: 5/15/18