NO. 20-_____

In the Supreme Court of the United States

MICHAEL AARON STRICKLAND,

Petitioner,

v.

STATE OF OREGON,

Respondent.

On Petition for a Writ of Certiorari to the Oregon Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Oregon courts err in holding that there is no Constitutional right of self-defense except for when someone like the judge would have behaved the same way under a purely "objective" "reasonable person" standard, thus excluding all evidence of defendant's prior experiences, defendant's state of mind at the time, and defendant's intent in general?

LIST OF PROCEEDINGS

Supreme Court of the State of Oregon

No. S067795

State of Oregon, *Plaintiff-Respondent, Respondent on Review* v. Michael Aaron Strickland, a/k/a Michael Strickland, *Defendant-Appellant, Petitioner on Review.*

Final Order Date: August 27, 2020

Court of Appeals of the State of Oregon

No. A165019

State of Oregon, *Plaintiff-Respondent* v. Michael Aaron Strickland, a/k/a Michael Strickland, *Defendant-Appellant.*

Opinion Date: April 1, 2020

Rehearing Denial Date: May 4, 2020

Circuit Court of the State of Oregon for the County of Multnomah

No. 16CR41718

State of Oregon, *Plaintiff* v. Michael Aaron Strickland, *Defendant.*

Judgment and Sentencing Date: July 8, 2016

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OPINIONS BELOW

The Court of Appeals of the State of Oregon issued its opinion on April 1, 2020 (App.3a). This decision affirmed the judgment of conviction by the Circuit Court of Oregon, Multnomah County, dated July 8, 2016 (App.9a) and its order on motions in limine, dated January 30, 2017 (App.39a) which excluded Petitioner's self-defense evidence. The Order of the Supreme Court of Oregon denied a petition for review on August 27, 2020. (App.1a). These opinions have not been designated for publication.

JURISDICTION

The Oregon Supreme Court denied review of this case on August 27, 2020. The Oregon Court of Appeals issued a decision affirming Strickland's conviction on April 1, 2020. App.1a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. II

> The Second Amendment of the United States Constitution reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall

not be infringed." Such language has created considerable debate regarding the Amendment's intended scope. On the one hand, some believe that the Amendment's phrase "the right of the people to keep and bear Arms" creates an individual constitutional right for citizens of the United States. Under this "individual right theory," the United States Constitution restricts legislative bodies from prohibiting firearm possession, or at the very least, the Amendment renders prohibitory and restrictive regulation presumptively unconstitutional. On the other hand, some scholars point to the prefatory language "a well regulated Militia" to argue that the Framers intended only to restrict Congress from legislating away a state's right to self-defense. Scholars have come to call this theory "the collective rights theory." A collective rights theory of the Second Amendment asserts that citizens do not have an individual right to possess guns and that local, state, and federal legislative bodies therefore possess the authority to regulate firearms without implicating a constitutional right.

U.S. Const. amend. XIV, § 1

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 laws.

ORS 161.209—
Use of Physical Force in Defense of a Person

> Except as provided in ORS 161.215 (Limitations on use of physical force in defense of a person) and 161.219 (Limitations on use of deadly physical force in defense of a person), a person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose. [1971 c.743 § 22]

ORS 163.190(1)—Menacing

> (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

ORS 166.025(1)(a)—
Disorderly Conduct in the Second Degree

> (1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:
>
> (a) Engages in fighting or in violent, tumultuous or threatening behavior

ORS 166.190—
Pointing Firearm at Another

> Any person over the age of 12 years who, with or without malice, purposely points or aims any

> loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than $10 nor more than $500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justice courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice court with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury.

ORS 166.220(1)(a)—
Unlawful Use of Weapon

> (1) A person commits the crime of unlawful use of a weapon if the person:
>
> (a) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon as defined in ORS 161.015;

STATEMENT OF THE CASE

A Factual Background

On July 7, 2016, Michael Aaron Strickland ("Strickland"), a local videographer and freelance journalist, attended a Black Lives Matter rally in

Portland, Oregon, with a video camera to film protestors and speakers. Strickland had been covering political events in the Portland area as a part-time hobby until 2015 when he was the victim of a violent attack that left him permanently injured and unable to return to his prior line of work. During the 2015 attack, two of his video cameras were stolen and he was body-slammed onto the pavement, leaving his arm shattered. This incident, and similar prior incidents where Strickland was threatened, were severe enough that they ultimately drove Strickland to legally carry a handgun to protect himself while attending events using a concealed handgun license that Strickland acquired in 2011.

As Strickland dedicated more time to his YouTube channel, international news distributors began hiring him to cover local events and national news sites hired him to write articles. A number of Strickland's videos started going viral and were being played on FOX News, MSNBC and several local news broadcasts.

On July 7, 2016, while filming a Black Lives Matter protest in downtown Portland, Strickland was carrying a concealed semi-automatic handgun with a valid Oregon concealed handgun license. He had received death threats in the weeks prior to the rally, and was known to several of the protestors, some of whom were affiliated with ANTIFA or similar organizations. On the day of the event, Strickland was filming the speakers on the steps of the Justice Center when several protestors confronted him. Six to seven protestors wearing bandanas over their faces, some armed with flagstaffs, called Strickland a racist, pushed him, and demanded that he leave. Strickland attempted to back away for 40 seconds as

the mob continued to bear down on him. However, with no police to defend him, Strickland eventually drew his legally carried handgun, held it with both hands, and scanned the protesters in front of him from left to right for seven seconds. This caused the group that was accosting him to step back. Strickland then re-holstered the gun and fled down the street to safety. Had Strickland waited any longer before drawing his weapon, they would have been on top of him. Police arrived shortly thereafter and Strickland explained that his actions were in self-defense and that he had a concealed handgun license.

B Procedural History

The State of Oregon charged Strickland with ten counts of menacing, ten counts of unlawful use of a weapon with a firearm, and one count of disorderly conduct in the second degree. Strickland argued that he acted as he did in self-defense in accordance with ORS 161.209. (App.2a).

During the course of the trial, the trial court granted two motions in limine for the State of Oregon. (App.39a). The first motion excluded evidence of a prior altercation where Strickland's arm was shattered from being presented at trial. *Id.* The second motion excluded the testimony from a police detective regarding a conversation between the detective and Strickland. *Id.* This conversation explained that Strickland had received death threats prior to the incident and was to be introduced as evidence of the defendant's state of mind at the time the incident occurred. *Id.*

The trial was held on February 6, 2017. A jury trial was waived in writing on February 7, 2017. (App.10a). Strickland was convicted of all charges on February

10, 2017. *Id.* Strickland was sentenced to 40 days in jail, 240 hours of community service, and was placed on supervised probation for three years, on the condition that he not possess any weapons or ammunition. *Id.* His right to make electronic recordings was also limited. (App.42a).

On May 30, 2017 Strickland timely filed a notice of appeal. In his appeal, Strickland argued that the trial court erred in granting the motions in limine. Specifically, Strickland argued that under ORS 161.209, "a person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force . . . ". ORS 161.209, emphasis added.

By granting the motion in limine, the trial court essentially prevented evidence of what Strickland reasonably believed at the time of the incident from being seen by the court. Indeed, the evidence that was excluded went to a central factual issue in the case: Strickland's history of suffering a debilitating injury, as well as the threats that he had previously received. These facts were critical to understand why Strickland feared for his safety and were even central to his decision to utilize a concealed carry permit.

The Court of Appeals acknowledged that the facts of the case were undisputed, and affirmed the ruling of the trial court, noting that: "The legal standard for assessing the reasonableness of a person's belief about the need for force or the extent of force necessary turns on an objective evaluation of the circumstances in which physical force has been used or threatened, and not on the personal perceptions of the individual defendant. *State v. Bassett*, 234 Or App 259, 228

P.3d 590, rev den, 348 Or 461 (2010) ("A defendant's subjective, honest belief that a perceived threat is great or imminent is not enough to justify" the use of self-defense.). *See also* 545-46, 303 P.3d 944 (2013), rev den, 354 Or 342 (2013) (in assessing a defendant's reasonable belief in a choice-of-evils defense, "reasonableness" is an objective standard that is measured from the perspective of "a person of ordinary intelligence and understanding" and does not take into account "the unique history or mental characteristics of any particular defendant")." (App.6a). However, the Court of Appeals then went on to note its decision in *State v. Jones*, where the court stated that, "The reasonableness' question when it comes to a self-defense claim is whether the circumstances as known to the defendant would lead a reasonable person who experiences those same circumstances to perceive the use of force to be necessary." (App.7a-8a).

In reaching this conclusion, the Court of Appeals held that Strickland's "past experiences were not probative of any claim of self-defense that (Strickland) asserted." (App.8a). Indeed, the Court of Appeals noted that: "Although defendant's past experience might have caused him to fear for his safety, as in *Hollingsworth*, it did not make more or less probable "the existence of any fact that is of consequence to the determination" of the claim of self-defense." (App.8a). Effectively, the Court of Appeals decided that threats of violence toward Strickland and past history of being a victim of political violence were not relevant in Strickland's claim of self-defense.

Strickland then petitioned for reconsideration on April 15, 2020, but was denied by the Court of Appeals. (App.40a). Strickland then appealed to the Oregon

Supreme Court. The Oregon Supreme Court denied review of this case on August 27, 2020. (App.1a).

REASONS FOR GRANTING THE PETITION

The Oregon Court of Appeals' decision interpreted the Constitutional right of self-defense in a manner that conflicts with the decision of other state courts, various federal Court of Appeals decisions, and this Court. Equally, deciding the scope of the right of self-defense in a criminal case is an important Constitutional question this court should settle.

I THE OREGON COURT DECISION NEGATES THE CONSTITUTIONAL RIGHT OF SELF-DEFENSE

The lower court's decision nullifies the right of self-defense by making it an entirely objective test that asks, "would I, the Judge, have reacted as this individual did?" without any regard for the life experience of the individual defendant, the subjective understanding of the individual defendant, and even the prior interactions between the individual defendant and others involved. Thus, a previously victimized, undersized photojournalist, surrounded by a group of known criminals with a history of physical violence at protest events, is treated as if he is a military-trained security guard harangued by some school kids. The right of self-defense means nothing if it is constricted to "would the Judge have acted the same way?" especially when that Judge may personally oppose ever using guns in self-defense, when the life experience of the individual is inadmissible, and

when the individual's own evidence on his own state of mind is excluded from trial.

A The Second Amendment Provides a Right of Self-Defense.

The Supreme Court of the United States recognized "the inherent right of self-defense has been central to the Second Amendment right." *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). The Second Amendment is unquestionably applicable to the states. As stated by the Supreme Court of the United States "The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the states." *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 744 (2010). As this Court repeatedly recognized, the purpose of the Second Amendment is "to protect an individual right to use arms for self-defense." *Heller* at 603. "[T]he right to keep arms involves, necessarily, the right to use such arms for all the ordinary purposes, and in all the ordinary modes usual in the country, and to which arms are adapted, limited by the duties of a good citizen in times of peace." *Id.* at 614.

Additionally, many state courts recognize the same. "The Constitutions of the United States and Louisiana give us the right to keep and bear arms. It follows, logically, that to keep and bear arms gives us the right to use the arms for the intended purpose for which they were manufactured." *McKellar v. Mason*, 159 So. 2d 700, 702 (La. Ct. App. 1964). In *City of Princeton v. Buckner*, 180 W. Va. 457, 460 (W. Va. 1988) the court states, "the Court in *Workman* found that there was a constitutional right to self-defense guaranteed to all persons under both the due process

clause of the Fourteenth Amendment to the United States Constitution." The state of Washington reinforced the same. *See State v. Hull*, No. 31078-7-III (Wash. Ct. App. 2014) (these decisions "necessarily support a Constitutional right to personal self-defense.")

This follows from international law customs developed over centuries. "There is however a very substantial body of contemporary legal discourse that yields rich insights, attracts powerful contributions from around the world, and overlaps in substance to a very large degree with contemporary American concerns regarding self-defense as a fundamental right under municipal law. This body of law is *jus ad bellum*, the international law governing the initial application of force that may or may not engender armed conflict." William G. Merkel, *The Second Amendment and the Constitutional Right to Self-Defense*, COLUMBIA LAW SCHOOL, p. 20 (citing George P. Fletcher, THE GRAMMAR OF CRIMINAL LAW: AMERICAN, COMPARATIVE & INTERNATIONAL-VOLUME ONE: FOUNDATIONS (2007) and George P. Fletcher and Jens David Ohlin, DEFENDING HUMANITY: WHEN FORCE IS JUSTIFIED & WHY (2008)).

This conforms to scholastic understanding of the Second Amendment: for the founding generation of Constitutional America, informed by the natural rights tradition and ancient customs alike, "Individuals had an inalienable right to defend themselves against violence. It was to protect this right, among others, that society and government were formed. Within society, citizens had a right to defend themselves against violence." Steven J. Heyman, *Natural Rights and the Second Amendment*, 76 CHI.-KENT L. REV 237, 240 (2000). Indeed, "the right to self-defense and to

the means of defending oneself is a basic natural right that grows out of the right to life" itself. Nelson Lund, *The Second Amendment and the Inalienable Right to Self-Defense*, Constitutional Guidance for Law Makers, No. 16 at 1. Even critics conceded the Second Amendment constituted the "Constitutionalization of Self-Defense" in criminal law. Alan Brownstein, *The Constitutionalization of Self-Defense in Tort & Criminal Law*, 60 HASTINGS L.J. 1205 (2009). Indeed, "the central component of the Second Amendment" is the "right to self-defense." *The Second Amendment As Positive Law*, 13 CHARLESTON LAW REVIEW 103, 110 (2018).

This historic understanding of the essential role of the Second Amendment's right of self-defense echoed throughout the philosophical texts and traditions that informed the legitimacy of Constitutional governments. *See* Kates Jr., Don. B., *The Second Amendment and the Ideology of Self-Protection*, Constitutional Commentary (1992); citing Robert E. Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. AM. HIST. 599 (1982); Joyce Lee Malcolm, *The Right of the People to Keep & Bear Arms: The Common Law Tradition*, 10 HAST. CONST. L.Q. 285 (1983). As historians summarize: "self-defense is at the core of the Second Amendment and was an element in the Founders' political thought generally" as the justification for Constitutional governance itself. From the most celebrated ancient political philosophers, a critical aspect of any self-governance was self-protection and self-defense, as "good citizens must always be prepared to defend themselves and their society against criminal usurpation" lest government itself no longer serve its purpose. Kates at 89.

Indeed, states across the country reinforced this Constitutionally enshrined right of self-defense from the threat of private violence in recent amici briefs to the federal courts. The states of Louisiana, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Mississippi, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and West Virginia joined as mutual amici to reinforce this right of self-defense in a recent Ninth Circuit case. Amici Brief, *Young v. Hawaii*, No. 12-17808 (9th Cir.). As the amici therein noted, like the Oregon court decision here, "lower courts have been inconsistent in the standards they have applied to Second Amendment challenges to state laws." Amici Brief at 1, *Young v. Hawaii*, No. 12-17808 (9th Cir.). The second-class standing afforded the Second Amendment must end.

The lower court decision in Oregon contradicted this understanding of the Constitution by not allowing evidence of self-defense to be presented.

B The Second Amendment Right of Self-Defense Requires a State Cannot Criminalize Self-Defense.

As previously stated, the Supreme Court of the United States has determined that the Second Amendment protects the right to self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). Further, these protections have been extended to apply to state governments as well as to the federal government. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 744 (2010). The question specific to this case, therefore, is whether excluding evidence of the defendant's state of mind from being admitted at trial impermissibly infringes on the Second Amendment by effectively

criminalizing self-defense. Indeed, the decision emphasized the individual nature of this right, especially "the individual's right to defend himself." *Kanter v. Barr*, 919 F.3d 437, 463 (7th Cir. 2019) (Barrett, J., dissenting)

The Oregon court's decision contradicted fellow federal court decisions, such as in *Wrenn v. District of Columbia*, 431 U.S. App. D.C. 62, 864 F.3d 650 (2017). In *Wrenn*, the D.C. Circuit held that the Second Amendment protects the right to defend oneself from unjust and unlawful lethal force. As stated previously, self-defense is a fundamental liberty protected by the Second Amendment, as it is meant to protect the life of the person exercising it. *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008). For this reason, it meets both parts of the test and should receive a heightened level of protection. As a constitutionally protected right, or as an essential defense for those accused of a crime, self-defense standards should be subject to equal protection claims, and the accused must have an opportunity to defend themselves using vital exculpatory evidence. As the court stated in *Depetris v. Kuykendall*, (9th Cir. 2001) 239 F.3d 1057, 1063:

> The trial court precluded petitioner from testifying fully about her state of mind and from presenting evidence that would have corroborated her testimony. Because this evidence was critical to her ability to defend against the charge, we hold that the exclusion of this evidence violated petitioner's clearly established constitutional right to due process of law — the right to present a valid defense as established by the Supreme Court in *Chambers* and *Washington.* Further, based

> on the foregoing independent review of the record, we find that the state court's error was also objectively unreasonable. *See Delgado v. Lewis*, 223 F.3d 976, 981-82 (9th Cir. 2000).

The decision of the Oregon court thus contradicts the decision of courts across the country. If the defendant subjectively believed harm is imminent, then there is imperfect self-defense. By denying the admittance of *mens rea* evidence, the Oregon court refused to consider evidence that may have influenced its ruling. Therefore, the Oregon court effectively criminalized self-defense by refusing to consider evidence that could exonerate the defendant. This effectively criminalizes the defendant's act of self-defense, and therefore infringes on his Second Amendment rights.

C Due Process Requires Self-Defense State of Mind Evidence Be Admissible.

As announced by the Supreme Court, it is indisputably federal law that a defendant in a criminal trial has the right to "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); *see also Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038. *Taylor v. Withrow*, 288 F.3d 846, 851 (2002). A defendant in a criminal trial has the right to "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); *see also Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038. *Taylor v. Withrow*, 288 F.3d 846, 851 (2002). Defendant is charged with the unlawful use of a weapon. By denying the defendant the chance to admit evidence

showing his mens rea, he has effectively been denied the chance to put on a complete defense.

"The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed. 2d 297 (1973); accord *Davis v. Alaska*, 415 U.S. 308, 317, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967). "The Supreme Court has made clear that the erroneous exclusion of critical, corroborative defense evidence may violate both the Fifth Amendment due process right to a fair trial and the Sixth Amendment right to present a defense." *DePetris v. Kuykendall*, 239 F.3d 1057, 1062 (2001) (citing *Chambers*, 410 U.S. at 294, 93 S.Ct. 1038; *Washington*, 388 U.S. at 18-19, 87 S.Ct. 1920).

Sister state courts in New York concur. New York courts have stated that a reasonable person in the defendant's position here may consider:

> the physical movements of the potential assailant [,] . . . any relevant knowledge the defendant has about that person [and,] . . . the physical attributes of all persons involved, including the defendant. Furthermore, the defendant's circumstances encompass any prior experiences he had which could provide a reasonable basis for the belief that another person's intentions were to [attack] . . . him or that the use of deadly force was necessary under the circumstances. *People v. Goetz*, 68 N.Y.2d 96, 114.

Courts there have been holding similar opinions on the subject for over a century:

> "only in cases where the killing took place under circumstances that afforded the slayer reasonable grounds to believe himself in peril, and then solely for the purpose of illustrating to the jury the motive which actuated him." (*People v. Lamb*, *supra,* p. 376.) Fear founded on fact tends to rebut the presumption of malice. The character of the deceased with reference to violence, when known to the accused, enables him to judge of the danger and aids the jury in deciding whether he acted in good faith and upon the honest belief that his life was in peril. It shows the state of his mind as to the necessity of defending himself. It bears upon the question whether, in the language of the Penal Code, "there is reasonable ground to apprehend a design on the part of the person slain * * * to do some great personal injury to the slayer * * * and there is imminent danger of such design being accomplished." (§ 205.) When self-defense is an issue, threats of the deceased, even if unknown to the defendant, are admissible, as they tend to show the state of mind of the deceased and that he was the aggressor. (*Stokes v. People*, 53 N.Y. 164, 174; *People v. Taylor*, 177 N.Y. 237.) Evidence of general reputation for violence, however, is received, not to show the state of mind of the deceased, but of the accused; not to show who was in fact the aggressor, but whether the defendant had

> reasonable ground to believe that he was in danger of great personal injury. Hence, it is obvious that whatever the reputation of the deceased for violence may be, it can have no bearing on what the defendant apprehended, unless he knew it. If he knew that the deceased was reputed to be violent, it might raise in his mind a fear of danger, but not otherwise. *People v. Rodawald*, 177 N.Y. 408, 423-24 (N.Y. 1904)

Sister state courts in Louisiana echo this sentiment, "It is impossible to look into one's mind and tell what he is thinking or what mental reflexes are taking place. We feel, however, that the act of Mason, considering the history of the previous invasions of his property would have justified him in feeling apprehensive for the physical safety of himself and his wife, in taking the harsh action he did resulting in the unfortunate and regrettable maiming of the young McKellar." *McKellar v. Mason* at 703.

Critical to self-defense is the burden on the government of proving lack of self-defense, negated here by excluding evidence of self-defense from the trial. *See Mullaney v. Wilbur*, 421 U.S. 684 (1975); *see also In re Winship*, 397 U.S. 358 (1970). Defendant was charged with unlawful use of a weapon, made a crime when a person "attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon." ORS 166.220(1)(a). By denying the defendant the chance to admit evidence showing or disproving his state of mind of self-defense, he has effectively been denied the chance to put on a complete defense of self-defense.

Oregon's completely objective standard for self-defense—would the judge have acted the same way?—does not comport with the Constitutional right of self-defense. Making self-defense a completely objective test would effectively deny the defendant his right to self-defense and criminalize self-defense. That is precisely what happened here. This court, federal appellate courts, and sister state supreme courts disagree with the precarious precedent set by the Oregon courts. Clarity is needed. Resolution is requested. Certiorari is warranted.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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JANUARY 25, 2020