

25-6378

IN THE SUPREME COURT OF THE UNITED STATES

KRISTON PRICE,

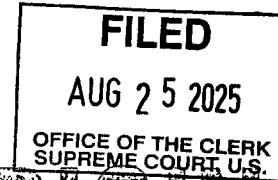
No. _____

Petitioner,

v.

STATE OF OHIO,

Respondent.



ORIGINAL

On Petition for a Writ of Certiorari to the
Court of Appeals of Ohio, Eighth Appellate District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether sufficient evidence existed to reject the defense of self-defense where the defendant was violently attacked, beaten, and through the a mirror in his own home, the state agreed that an instruction on self-defense, involving deadly force, was appropriate, the court provided the instruction, and the evidence established that the defendant was not at fault in causing the affray and possessed a subjective belief that he was in danger of death or great bodily harm?
2. Whether a defendant charged with aggravated murder is denied a fair trial when self-defense is asserted and, over objection of defense counsel, the trial court instructs the jury on the inferior degree offense of voluntary manslaughter absent sufficient evidence that he was acting out of rage or sudden passion or under sufficient provocation?
3. Whether the Sixth and Fourteenth Amendments are violated when a state court treats a defendant's lay descriptions of fear and survival ("heat of the moment," "enraged") as technical admissions of statutory elements of "sudden passion or rage," thereby converting a self-defense case into voluntary manslaughter?

OPINIONS BELOW

The opinion of the Court of Appeals of Ohio, Eighth Appellate District, affirming Petitioner's conviction was issued on November 27, 2024, and is unpublished but reproduced in the Appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on November 27, 2024. This petition is timely filed within ninety days. Jurisdiction is conferred by 28 U.S.C. § 1257 (a).

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STATEMENT OF THE CASE

I. The Events Leading to Trial

On July 26, 2022, Petitioner Price was violently assaulted by his former roommate, Landon Rogers, who entered into his home, uninvited. Price called police multiple times that day reporting that Rogers had been threatening him and intended to attack him, asking for help.

Rogers forcibly entered Price's bedroom door, and began to beat him - severely fracturing ribs, knocking out a tooth, and choking him so tight that he could not breathe. Fearing for his life, Price grabbed his gun and fired a series of shots, killing Rogers.

II. Jury Instructions

In its charge to the jury, the trial court instructed that the prosecution could defeat Price's claim of self-defense by proving beyond a reasonable doubt at least one of the following:

- That Petitioner Price was at fault in creating the situation giving rise to the incident;
- That Petitioner Price did not have reasonable grounds to believe that he was in imminent or immediate danger of death or great bodily harm;
- That Petitioner Price did not have an honest belief—even if mistaken—that he was in such imminent or immediate danger; or
- That Petitioner Price used unreasonable force.

Appendix B, excerpt from jury charge.

With respect to the charge of aggravated murder, the trial court further instructed the jury that:

“Before you can find the defendant guilty of aggravated murder, you must find beyond a reasonable doubt that the defendant purposely, and with prior calculation and design, caused the death of another, to wit, Landon Rogers.”

The court added:

“If you do not find that the state has proven each of these elements beyond a reasonable doubt, you must find the defendant not guilty of aggravated murder.”

The court then instructed on voluntary manslaughter:

“If you find that the state proved beyond a reasonable doubt all the essential elements of aggravated murder and you further find

beyond a reasonable doubt that the defendant acted while under the influence of sudden passion or in a sudden fit of rage, brought on by serious provocation reasonably sufficient to incite the defendant into using deadly force, then you must find the defendant guilty of the inferior offense of voluntary manslaughter."

Appendix B, except from jury charge, pages 1441-1444.

III. The Verdict

The jury acquitted Price of aggravated murder, thereby rejecting at least one or all of the essential elements. Yet the jury convicted Price of voluntary manslaughter—a verdict requiring a finding that all of the aggravated murder elements were proven, under the beyond a reasonable doubt standard, tethered to an additional finding of provocation which served to reduce the degree of offense convicted, not the nature.

IV. The Appeal

On appeal, counsel argued that self-defense and voluntary manslaughter are mutually exclusive, that the instructions created an unconstitutional inconsistency, and that the appellate court misused Price's testimony. The panel affirmed, treating Price's lay phrases—"heat of the moment," "enraged"—as statutory admissions of passion/rage, disregarding the fact that he testified he was terrified and fighting to stay alive. Appendix A.

10. The following is a list of the names of the persons who are to be interviewed:

1. Mr. John Doe, 45 years old, residing at 123 Main Street, New York, NY.

2. Mrs. Mary Smith, 38 years old, residing at 123 Main Street, New York, NY.

3. Mr. James Brown, 52 years old, residing at 123 Main Street, New York, NY.

4. Mrs. Linda Green, 42 years old, residing at 123 Main Street, New York, NY.

5. Mr. Robert Johnson, 48 years old, residing at 123 Main Street, New York, NY.

6. Mrs. Emily Williams, 35 years old, residing at 123 Main Street, New York, NY.

7. Mr. Charles Miller, 55 years old, residing at 123 Main Street, New York, NY.

REASONS FOR GRANTING THE WRIT

I. Insufficient Evidence Did Not Exist to Defeat Price's Claim of Self Defense.

In its charge to the jury, the trial court instructed the jury that the prosecution could defeat Price's claim of self-defense by proving, beyond a reasonable doubt, any one of the following:

- That the defendant was at fault in creating the situation giving rise to the incident;
- That the defendant did not have reasonable grounds to believe that he was in imminent or immediate danger of death or great bodily harm;
- That the defendant did not have an honest belief—even if mistaken—that he was in such imminent or immediate danger; or
- That the defendant used unreasonable force.

Appendix B, (jury charge at 1389-90).

Under Ohio law, to be entitled to acquittal under a theory of self-defense, involving deadly force, the evidence must establish the following: (1) the defendant was not at fault in creating the situation that gave rise to the altercation; and (2) he had a bona fide belief that he was in imminent danger of death or great bodily harm. *State v. Palmer*, 174 Ohio St.3d 561, 566 (2023);

State v. Messenger, 171 Ohio St.3d 227 (2022); *Marts v. State*, 26 Ohio St. 162, syllabus at 2 (1924).

If a defendant meets his burden and establishes entitlement to a self-defense instruction, acquittal is required unless the state proves, beyond a reasonable doubt standard, that self-defense was not established. *Id.* See also, *Jackson v. Virginia*, 443 U.S. 307 (1979).

This standard was met here. The evidence established that Price was not at fault at starting the affray, and that he possessed a bona fide belief that he was in imminent threat of death or great bodily harm.

The panel concluded that Price was “at fault” in creating the affray, by agreeing to “catch a 60” with Rogers in a series of text messages. The record establishes that Price was inside his own home when Rogers entered without invitation, kicked down his bedroom door, and physically assaulted him by choking, kicking, and slamming him through furniture, including the bedroom mirror.

Under Ohio law, a defendant attacked in his own home is presumed to have acted in self-defense unless the State proves otherwise beyond a reasonable doubt. R.C. § 2901.05 (B) (1). No rational trier of fact could

reasonably conclude that Price provoked or created the confrontation when he was literally on the defensive in his own home.

The panel also held that Price lacked “reasonable grounds” for fear, focusing on the text messages about “catching 60” (a fistfight). This misapprehends the trial evidence. On the day of the shooting, Rogers broke down the bedroom door and choked Price and beat him, throwing him through the bedroom mirror. The law does not condone Roger’s conduct, and the law of self-defense authorizes a citizen to use deadly force under the attack described when a person unlawfully enters his home.

Objective grounds for believing one is in imminent danger of death or serious bodily harm are satisfied by being attacked violently in one’s own home. No proof of Rogers possessing a firearm was required — the law looks to what a reasonable person in Price’s position, at the moment of the incident, would believe.

Insufficient evidence existed to overcome Price’s testimony that being violently attacked in his home, being thrown through mirrors and furniture, having his teeth knocked out, caused him to reasonably believe that he was in imminent danger of death or serious bodily harm. Serious bodily harm defined in Ohio law at R.C. § 2901.05 (A) (5), as:

- Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- Any physical harm that carries a substantial risk of death;
- Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

All of these applied. The panel additionally based its denial on the conclusion that Price lacked an “honest belief” in imminent peril, relying on his allegedly calm demeanor in 911 calls. This ignores Price’s subjective belief while being attacked, and his sworn trial testimony describing sheer fear: “I felt like I was literally about to die and about to be killed and I was choked.” The jury was not free to disregard this testimony unless the State met its burden to disprove it beyond a reasonable doubt.

The panel also relied on forensic claims: two downward shots to Rogers' back suggested "execution shots." The panel relied on this evidence to conclude that the degree of force used was unreasonable.

This was constitutionally improper: Once the evidence established that Price was not at fault, and that at the moment he shot Rogers, he subjectively feared death or great bodily harm were imminent, the use of deadly force was per-se reasonable and lawful.

This case therefore presents this Honorable Court with the opportunity to address this unique and recurring question, namely, the import of *Jackson, supra*, when a valid claim of self-defense is presented.

Also before this Court is the constitutionality of the court providing improper factors as a basis for rejecting Price's claim of self-defense, which diluted the state's burden of proof and impeded a proper sufficiency of the evidence inquiry. Cf., *Mullaney v. Wilbur*, 421 U.S. 684 (1975).

Ohio law requires the State to disprove a bona fide belief of imminent death or serious bodily harm—meaning both honest and reasonable. By splitting honesty and reasonableness into two separate prongs (instructed factors Nos. 2 and 3), the instruction lowered the State's burden. It allowed the jury to reject Price's claim of self-defense even if Price had an honest

belief of imminent danger, so long as it deemed his belief not reasonably grounded: contravening *Winship, Mullaney, supra*.

Ohio law authorizes the use of deadly force if the defendant was not at fault in creating the situation, and the defendant subjectively believed, even if mistaken, that he was in imminent danger of death or great bodily injury.

By telling the jury it could reject self-defense if it concluded that Price used "unreasonable force," this improper instruction authorized a guilty verdict if the jury believed that the use of deadly force was unreasonable, even though it believed that Price was not at fault in creating the situation and he subjectively believed he was in imminent danger of death or great bodily injury. Cf., *Mullaney, supra*; *Sandstrom v. Montana*, 442 U.S. 510 (1979).

Together, these erroneous components of the instruction deprived Price of due process of law and a correct and fair assessment of his sufficiency of the evidence question.

II. Insufficient Evidence Existed to Support the Charge of Voluntary Manslaughter.

R.C. § 2903.03 defines the crime of voluntary manslaughter, and provides in pertinent part:

No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by

serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another.

The trial court's instruction mirrored that definition:

Before you can find the defendant guilty of voluntary manslaughter you must find beyond a reasonable doubt that on or about the 26th day of July, 2022, in Cuyahoga County, Ohio the defendant, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force.

(Trial transcripts, at page 1400.)

The trial court also gave a full instruction on self-defense, including the presumption that the defendant was acting in self-defense in repelling an intruder into his home, pursuant to R.C. § 2901.05 (B) (1). The evidence adduced by the state was insufficient to overcome this presumption, and it was certainly insufficient to disprove Price's claims of fear and fighting for his life, while under attack by a former roommate in his own home.

An instruction on voluntary manslaughter is completely inconsistent with the theory of self-defense. A finding of not guilty based on self-defense is appropriate when the defendant did not start the affray and – under aggressive

and unlawful conduct of the accuser - the defendant possessed a bona fide belief that he was in imminent danger of death or great bodily harm.

Voluntary manslaughter, on the other hand, requires a finding of proven on every element of aggravated murder and reduces the degree of offense under an additional finding of provocation. Acts engaged in fear of death or great bodily harm, in the midst of an affray not caused by conduct of the accused, cannot justify an instruction for voluntary manslaughter.

Given the prosecutor's concession that he had no basis for objecting to a self-defense instruction, and his admission in closing argument that "the crux of this case really comes down to self-defense," a voluntary manslaughter instruction should never have been given.

The trial court's error in giving an instruction on voluntary manslaughter, when that contradicted Price's claim of self-defense, was compounded by the fact that there was no evidence to support the former.

State v. Thompson, 141 Ohio St.3d 254 (2014), established the legal test for voluntary manslaughter, and includes both an objective and subjective component:

- First - the objective factor - a factfinder must determine whether a serious provocation occurred and whether that provocation was

sufficient to arouse the passions of an ordinary person beyond the power of his or her control.

- Second - the subjective factor - the factfinder must evaluate whether this actor, in this particular case, actually was under the influence of sudden passion or in a sudden fit of rage.

It is impossible to discern how the situation here satisfies either test.

The only argument advanced by the prosecutor as to how voluntary manslaughter would apply to this situation was the following, in closing argument:

You heard the testimony of the fight that was supposed to happen that day. You heard the animosity between Mr. Rogers and Mr. Price regarding being roommates and everything that led up to that. And that's why Mr. Price was so angry. He had been letting this guy, according to him, live rent free three months and get in his face mad with him about a shirt when he is out couple thousand dollars in rent money, bills and food. He was enraged. That's why he shot him.

(T.p. 317.)

As the Ohio Supreme Court explained, provocation, to be serious, must be reasonably sufficient to bring on extreme stress and the provocation must be reasonably sufficient to incite or to arouse the defendant into using deadly force. *State v. Mack*, 82 Ohio St.3d 198,200 (1998).

In determining whether the provocation was reasonably sufficient to incite Price into using deadly force, the trial court was required to consider the emotional and mental state Price labored under and the conditions and circumstances that surrounded him at the time. If insufficient evidence of provocation was established, the judge was required, as a matter of law, to refuse to give a voluntary manslaughter instruction. *State v. Shane*, 63 Ohio St.3d 630, 634 (1992).

The State's theory was legally insufficient to overcome this mandate. First, failing to pay one's share of the rent is hardly the type of "provocation" sufficient to incite a person into using deadly force. Cf., *State v. Moore*, 2001 Ohio App. LEXIS 2421 (8th Dist.) (victim's statement to defendant, "nigger, you got a badge and a gun, now what are you going to do" insufficient to establish "provocation" for R.C. § 2903.03 purposes); *State v. Teets*, 2017-Ohio-7372 (4th Dist.) ("tense argument" about keys and rent not sufficient).

Second, "past incidents do not satisfy the test for reasonably sufficient provocation when there is sufficient time for cooling off." *State v. Shane*, 60 Ohio St.3d 630 (1992); *State v. Grigsby*, 2001 Ohio App. LEXIS 2474 (2nd Dist.) (defendant had ample time to cool off after fight seven hours earlier).

Whatever rage (if any) Price might have felt about Rogers' stiffing him on the rent, he had more than ample time to quell it.

From an objective standpoint, the evidence failed to show that "provocation" was established which was sufficient to induce a person to respond with deadly force.

Nor did the evidence meet the subjective test. While the prosecutor struggled unsuccessfully in cross-examination to cast Price's actions as being based on anger rather than fear (T.p. 1213), this misapprehends the distinction between the two.

One might certainly experience anger at being physically attacked, but that is not the "sudden rage or passion" that is contemplated by Ohio's voluntary manslaughter statute. If it were, voluntary manslaughter and self-defense would be inextricably intertwined.

It must be one or the other. There was no basis for the trial court's instruction on voluntary manslaughter because the evidence was insufficient to warrant it. Given the insufficiency of the evidence, Price's conviction for voluntary manslaughter must be vacated, and he should be discharged.

III. The Panel Opinion Involved an Unreasonable Application of the Facts and Evidence

Petitioner Price killed a man who attacked him in his own apartment. In his trial for aggravated murder, he asserted self-defense. Over objection by the defense, the trial court instructed the jury on the inferior offense of voluntary manslaughter.

Although Ohio courts have long held that self-defense and voluntary manslaughter are mutually exclusive, the court of appeals affirmed it in this case. It did so by construing Price's testimony that he was "enraged" while defending himself as an acknowledgment that he met the "sudden passion" element of voluntary manslaughter, and assumed without explanation that being assaulted meets the "provocation" element of that offense. Appendix A.

This case offers the Court an opportunity to clarify the distinction between self-defense and voluntary manslaughter, a clarification that is sorely needed. This is especially problematic in the context of this case.

The lower court held that being assaulted can constitute the "provocation" necessary to trigger application of the voluntary manslaughter statute; not merely blurring but obliterating the line between that offense and self-defense. The lower court further held that unless the defendant acts dispassionately in defending himself – a practical impossibility – his conduct satisfies the "sudden passion or rage" element of voluntary manslaughter.

This Court needs to accept this case to clarify that a physical assault that threatens death or great bodily harm is not “provocation” within the meaning of voluntary manslaughter statutes, and that “sudden passion or rage,” normally inherent in a situation where one is fighting for his life, is distinguishable from the “sudden passion or rage” under voluntary manslaughter statutes.

Price’s testimony—“heat of the moment,” “enraged”—was lay language describing trauma and survival. He consistently said he was “afraid” and “fighting to stay alive.” The appellate court’s treatment of lay testimony as statutory admissions of passion/rage was a distortion that deprived him of a fair appellate process, a meaningful defense, and due process of law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Should this Court decline plenary review, Price alternatively moves this Court to grant the petition, vacate the judgment below, and remand (GVR) for further consideration in light of *Jackson*, *Winship*, or *Mullaney*, *supra*.

Respectfully submitted,

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