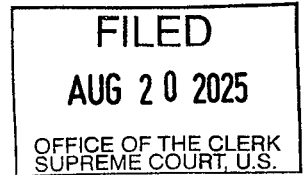


No. **25-6809**

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL WAYNE KELLER - PETITIONER
(Your Name)

VS.

CHADWICK S. DOTSON - RESPONDENT(S)

VIRGINIA DEPT. OF CORRECTIONS

ON PETITION FOR A WRIT OF CERTIORARI

US Court of Appeals for the 4th Circuit

(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

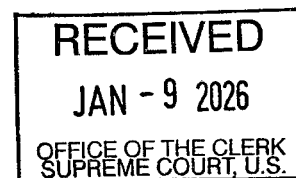
PETITION FOR WRIT OF CERTIORARI

Michael W. Keller, #1961864
(Your Name)

3521 Woodsway
(Address)

State Farm Va 23160
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

- 1) Was the definition of malice given to the jury a proper Virginia model jury instruction defining heat of passion?
- 2) Did counsel for appellant request a proper, specific, and complete jury instruction defining heat of passion?
- 3) Did the trial court error by allowing Commonwealth Jury Instruction “#14”?

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 subject of this petition is as follows:

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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 2025 U.S. Dist. LEXIS 30871; 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☐ is unpublished.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 2024 U.S. Dist. LEXIS 240114; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☒ reported at Record No. 23067; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A 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
May 23, 2025

☒ 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: N/A, 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 N/A (date) on (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

☒ For cases from **state courts**:

The date on which the highest state court decided my case was .
A copy of that decision appears at Appendix .

☒ A timely petition for rehearing was thereafter denied on the following date:
 , and a copy of the order denying rehearing appears at Appendix .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

"No person shall be held to answer for a capital, or otherwise infamous crime...nor be deprived of life, liberty, or property, without due process of law." U.S. Const., Amd. V.

"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." U.S. Const., Amd. VI.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const., Amd., VIII.

"No state shall... 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." U.S. Const., XIV, Amd.

Statement of Case

On February 27, 2020, petitioner was sentenced to twenty-three years in the Circuit Court of the City of Newport News, Virginia, in violation of Va. code §18.2-51.2 (A), Aggravated Malicious Wounding , and 18.2-53.1, Use of a Firearm in the Commission of a Felony.

Petitioner appealed to the Virginia Court of Appeals, and was denied on May, 18, 2021. Petitioner then appealed his conviction to the Supreme Court of Virginia, which was denied on December 15, 2021.

Petitioner then appealed to the U.S. District Court of the Eastern District of Virginia, which was denied and ultimately Petitioner's appeal to the Fourth Circuit on May 23, 2025

The instant petition for a Writ of Certiorari presents an issue of the first impression in Virginia being that there exist no Virginia model jury instruction, specifically, and complete, defining heat of passion.

Reasons For Granting The Petition

Question Presented #1

The definition of Malice given to the jury was not a proper Virginia Model Jury Instruction defining heat of passion.

Petitioner was denied his Fifth and Fourteenth Amendment Rights to the United States Constitution when Due Process was denied by the Circuit Court of the City of Newport News, Virginia when the court failed to provide the jury with proper Virginia Model Jury Instruction heat of passion.

Being that there exist no proper, specific, and complete Virginia Model Jury Instruction defining heat of passion, the court instead provided the jury an instruction defining Malice. See Exhibit 1.

Petitioner was prejudiced by the court's instruction on malice because it found that petitioner acted with malice when committing the crime, rather than acting out of heat of passion.

The instruction was confusing to the jury because had it known that it could have convicted the petitioner on a lesser offense of unlawful wounding, without malice and in the heat of passion, rather than aggravated malicious wounding, as charged then the jury could have sentenced the petitioner anywhere from between 1 and 5 years, instead of the sentence of 23 years for aggravated malicious wounding.

"Because malice and heat of passion cannot coexist, it follows that the jury must be appropriately apprised of the legal definition of each." *Lee v. Clarke*, 781 F. 3d. 114 (4th. Cir. 2015).

There was ample evidence in the petitioner's trial to support that he acted in the heat of passion.

"[A] jury must be informed as to the essential elements of the offense; a correct statement of the law is one of the "essentials of a fair trial." *Dowdy v. Commonwealth*, 220 Va. 114, 116, 255 S.E. 2d 506, 508 (1979).

Being that there exist no proper, specific, and complete Virginia model jury instruction defining heat of passion, petitioner was denied a fair trial and his Due Process rights were violated.

As stated, this petition presents an issue of First Impression in Virginia being that any court has yet to rule defining heat of passion, specifically, completely, and by presentation of a proper model jury instruction.

Petition should be granted so that this issue be resolved by this Honorable Court for all time.

Question Presented #2

Trial counsel for petitioner failed to request of the court a proper, specific, and complete Virginia model jury instruction defining heat of passion, thereby denying the petitioner his 5th and 14th Amendment rights of the United States Constitution, Due Process of Law.

It is firmly established that when counsel fails to specifically request a jury instruction defining heat of passion when there is evidence to support it, then counsel's performance has proven deficient. *Lee v. Clarke*, 781 F. 3d. 114; *Barrett v. Commonwealth*, 231 Va. 102; *Strickland v. Washington*, 466 U.S. 688.

Petitioner was convicted of committing the crime of aggravated malicious wounding and there was ample evidence that the petitioner acted in the heat of passion.

The court provided jury instruction defining malice, which contained an element of heat of passion, though not a Virginia model jury instruction.

Trial counsel for petitioner, rather than request of the court a proper, specific, and complete Virginia model jury instruction defining heat of passion allowed the jury instruction of malice to be presented to the jury, which prejudiced the petitioner. Had the jury understood the true definition of heat of passion, they could have convicted the petitioner of the lesser offense of unlawful wounding being that the petitioner acted in the heat of passion when committing the crime accused of, as ample evidence during trial suggested.

It was cruel and unusual punishment for the petitioner to be sentenced to 23 years for aggravated malicious wounding when the jury could have secured a sentence of 1 to 5 years for unlawful wounding, since the petitioner acted in the heat of passion when committing the crime, as was evidenced during trial. U.S. Const. Amd. VIII.

But for petitioner's trial counsel's failure to request from the court a proper, specific, and complete Virginia model jury instruction defining heat of passion, the results of the trial would have been different.

Question Presented #3

The trial court erred by allowing the Commonwealth Jury Instruction number fourteen which stated: "Where it is not the victim of a crime who provoked the defendant's Heat of Passion, the evidence will not support a finding of Heat of Passion."

Because the instruction was misleading and would reasonably lead Jurors to erroneously believe that if a person other than the victim initially provoked appellant's Heat of Passion, The jury would then be precluded from determining that the victim also provoked appellant's Heat of Passion.

Jury Instruction no.14 was an inaccurate and misleading statement of law.

Jury Instruction no.14 offered by the Commonwealth and granted over defense objection, stated "Where it is not the victim of the crime who provoked the defendant's heat of passion, The evidence will not support the finding of Heat of Passion. This language is highly confusing and could have accused the jury to erroneously conclude that they were precluded from finding that Barton was a cause of appellant's heat of passion because Hodges, who is "not the victim", was the initial cause of appellant's heat of passion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Michael Kell

Date: 8/20/2025