

No. 25 - 7050

IN THE SUPREME COURT OF THE UNITED STATES

TAAJ QAADIR BLAN,
Petitioner

VS.

PENNSYLVANIA,
Respondent

**ON PETITION FOR WRIT OF CERTIORARI
TO THE PENNSYLVANIA SUPERIOR COURT**

**REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI**

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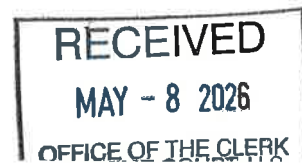


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ARGUMENT

1. Respondents claim that this Honorable Court is without jurisdiction is meritless as petitioner has raised a federal constitutional issue as to the conflicting conclusions of law.

Respondent attempts to characterize this case as involving only matters of state law. That argument fails because the decision below implicates core protections of the United States Constitution. The question presented is whether the trial court erred and abused its discretion by not sending out a printed copy of the justification/self-defense instruction along with the charges when the jury requested a written description of the counts against petitioner and a definition of malice.

This Honorable Court has repeatedly held that the constitution guarantees a meaningful opportunity to present a complete defense. *see California V. Trombetta*, 476 U.S. 683 690 (1986). It has further held that jury instructions violate Due Process when they so infect the entire trial, that the resulting conviction violates Due Process. *see Cupp V. Naughten*, 414 U.S. 141, 147 (1973).

Here in this instant case the trial court equipped the jury with written guidance on malice and the elements of the offenses, key components of the prosecutions case, while initially denying written guidance on self-defense. Respondent claims petitioner has not raised a federal question in which petitioner asserts the aforementioned question is a constitutional question. In *Bryant V.*

Zimmerman, 278 U.S. 63, 49 S. Ct. 61, 73 L Ed 184 (1928) this Honorable Court observed " while it was required that federal question be drawn in question by presentation to state court, no particular form or words to that end was necessary". Petitioner has raised this issue in the lower courts which was preserved for this Honorable Courts review.

Respondent cites United States Supreme Court Rule 12 (a), (b), which does not exist, therefore the premise of argument in relation to this rule is omitted and meritless.

2. Respondents claim that the trial court did not err or abuse its discretion when the court did send out to the jury the written self-defense instruction after the jury requested information contained in it is meritless as this is an altered narrative of what petitioner asserted as question presented for this Honorable Courts review.

Respondent cites P.A.R.Crim.P. 646 and P.A.R.Crim.P.646 (B) as grounds that petitioner is not entitled to relief on this issue. Which in its entirety this rule provides:

The trial judge may permit the members of the jury to have for use during deliberations written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed.

(1) If the judge permits members of the jury to have written copies of the portion

of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed, the judge shall provide that portion of the judge's charge in its **entirety** (emphasis added).

This rule exists to prevent jurors from deliberating under an incomplete or skewed understanding of law. In *Commonwealth V. Hernandez* 175 a.3d 1104 (pa super. 2017), (*passim*) the Pennsylvania Superior Court enforced that principle, vacating a conviction because the jury lacked access to a critical self-defense instruction during deliberations. The court recognized that withholding essential legal guidance creates an unacceptable risk that the verdict results on a misunderstanding of the law, and over emphasizing materials it has while deemphasizing materials it does not have in front of them.

Petitioners case presents the same defect, the trial court provided the jury with written instructions favoring the prosecution, including elements of the offenses and a definition of malice but withheld the justification/self-defense instruction, which was central to petitioner's defense. The jury asked for the counts and charges against petitioner, and a definition of malice initially, then the jury asked another set of questions, only then was the self-defense instruction provided.

Despite these facts, the Pennsylvania Superior Court concluded that there was no error because the instruction was eventually given which is in

contradiction of PA.R.Crim.P.646(B). That reasoning cannot be reconciled with *Commonwealth V. Hernandez*, 175 A.3d 1104 (PA Super. 2017), (*passim*) where the court held that similar omissions required reversal. Both cases involve juries deliberating without necessary legal instructions; both implicate the same rule (PA.R.Crim.P.646(B).); both present the same risk of prejudice yet only one defendant received relief.

This inconsistency is not merely a matter of state law disagreement, it is constitutional error. The Due Process Clause prohibits arbitrary adjudication and guarantees defendants a fair opportunity to have their legal claims decided under consistent standards. *See Hicks V. Oklahoma*, 447 U.S. 343, 346, 100 S. Ct. 2227, 65 L Ed 2d 175 (1980). Likewise, the Equal Protection Clause forbids a state from treating similarly situated defendants differently without a rational basis. When the PA Superior court applies one rule to *Commonwealth V. Hernandez*, 175 A.3d 1104 (PA Super. 2017) (*passim*) and another to petitioner it violates both guarantees.

The constitutional problem is especially acute here because the omitted instruction concerned self-defense, the core of petitioner's case and contrary to the respondents assertions, entitles petitioner to relief. This Honorable Court has long recognized that a defendant has a right to present a complete defense and to have the jury properly instructed on that defense. Depriving jurors of that instruction

while they deliberated with other written instructions on the elements of the offenses, and charges undermines the fairness of the the trial itself.

CONCLUSION

Because there is a meritorious Federal Due Process question before this Honorable Court that was presented in the State Courts below, which was ruled on by the Pennsylvania Superior Court in conflict with its own previous rulings on this constitutional issue pertaining to written jury instructions, in the same district, on the same matter, petitioner asks this Honorable Court to grant Petition for Writ of Certiorari.

Respectfully submitted,

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