

Ex parte: John Steele

19-6484

In The

Supreme Court of the United States

John Harry Steele

- Petitioner

vs.

FILED

AUG 19 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Jimmy Thomas, Warden - Respondant

Writ of Habeas Corpus

John Harry Steele, AIS # 284155

Bibb County Correctional Facility

565 Bibb Lane

Brent, AL. 35034

Oral Argument Requested

Question Presented

- 1) Was the Petitioner denied due process of law, in violation of the 14th Amendment by the circumstance that the Petitioner's conviction was affirmed under a criminal statute for a violation of which Petitioner had not been charged with?
- 2) Was the Petitioner denied due process of law, in violation of the 14th Amendment by the circumstance that the Petitioner's arrest and prosecution resulted from fundamental unfairness?

List of Parties

All parties appear in the caption of the case on the cover page.

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In The
Supreme Court of the United States

Petition for Writ of Habeas Corpus

Petitioner respectfully prays that a Petition for Writ of Habeas Corpus issue to review the judgement below and the legality of incarceration.

Opinions Below

☒ For cases from State Courts:

The opinion of the Alabama Court of Criminal Appeals appears at Appendix A to the petition and is

☒ is unpublished.

Jurisdiction

The jurisdiction of this court is invoked under 28 U.S.C. § 1651 (a), and/or § 2254 (a).

Constitutional and Statutory Provisions Involved

4 th Amendment to U.S. Constitution	12, 17
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14 th Amendment to U.S. Constitution	9, 17

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Statement of the case:

On March 18, 2011, Petitioner was arrested and charged with murder pursuant to Alabama Code 1975 §13A-6-2(a)(1)

On May 16, 2012, Petitioner was found guilty as charged in the indictment.

On February 1, 2013, the Alabama Court of Criminal Appeals affirmed conviction.

On January 31, 2014, Petitioner filed a Rule 32 petition claiming Ineffective Assistance of Counsel.

On December 4, 2015, the Alabama Supreme Court issued a certificate of Judgment affirming the denial of the Rule 32.

On December 22, 2015, Petitioner filed a petition for writ of habeas corpus in the District Court for the Southern District of Alabama.

On November 22, 2016, The District Court for the Southern District of Alabama denied request for federal habeas corpus relief. Petitioner was also denied a certificate of appealability and in forma pauperis status.

On September 19, 2017, the Eleventh Circuit Court of Appeals denied petitioners application for a certificate of appealability.

On November 17, 2017, the Eleventh Circuit Court of Appeals denied petitioners motion to reconsider

On February 14, 2018, Petitioner filed a writ of certiorari with the Supreme Court of the United States appealing the Eleventh Circuit Court of Appeals ruling.

On April 23, 2018, The Supreme Court of the United States denied without opinion.

On May 16, 2018, Petitioner filed a petition for rehearing.

On July 16, 2018, the Supreme Court of the United States denied the petition for rehearing without opinion.

On October 9, 2019, Petitioner is filing this instant petition for Writ of Habeas Corpus to challenge the legality of his incarceration.

Reason for Granting the Writ

1) 28 U.S.C. § 2254(b)(1)(b)(i): There is an absence of available corrective Process.

Attempt to present this petition in State courts will be futile. The petition will show that exceptional circumstances warrant the exercise of this Court's discretionary powers.

Petitioner's conviction was affirmed under a criminal statute for a violation of which he was not charged with

The 5th Amendment of the constitution provides that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury"

The grand jury serves the dual function of determining if there is probable cause to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions.

Rule 13.2(b) charging the offense: The indictment or information shall state for each separate offense, other than lesser included offenses, the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. (Alabama Rules of Criminal Procedure)

Alabama Code (1975) (as amended by acts 2016, No 16-29, effective May 1, 2016)
13A-6-2: Murder (a) A person commits the crime of murder if he or she does any of the following: (1) with the intent to cause the death of another person, he or she causes the death of that person or of another person.

In the indictment, Petitioner was charged with the following:

"The Grand Jury of Choctaw County charges, before the finding of this indictment, John H. Steele, whose name is otherwise unknown to the Grand Jury than as stated, did intentionally cause the death of another person, to-wit: William M. Aston III, by stabbing him with a knife, in violation of 13A-6-2 of the code of Alabama, against the peace and dignity of the State of Alabama." (Appendix H)

The indictment detracted from the language of the statute as codified in Alabama Code (1975) 13A-6-2 (a)(1) and change the legislative intent of the law.

The Alabama Supreme Court made clear in Hamilton v. Autauga County, 289 Ala. 419, 268 So.2d 30 (1972), that the legislative intent is "the all important or controlling factor," because under our system of government "the legislative intent constitutes law."

Moreover, "We can only learn what the legislature intended by what it is said," Ex parte Willison, 269 Ala. 263, 112 So.2d 443 (1959) "we must find that intent only from the words in which it is expressed, applied to the facts existing at the time," Mitchell v. Mobile County, 294 Ala. 130, 313 So.2d 172; "we must determine the intent of the legislature 'by what it has said' and by that which it has 'expressed in the statute,'" Hamilton v. Autauga County, *Supra*.

"When the language is plain, it should be considered to mean what it says." Ex parte Bozeman, 183 Ala. 91, 63 So.2d 201 (1913); Kimbrell v. State, 272 Ala. 419, 132 So.2d 132 (1961)

By its terms, the legislation required both, that the defendant have the specific intent to cause the death and that the defendant had caused the death. "With the intent to cause the death" is a statutory element of the crime which must be alleged and proven.

"Intentional killing requires that the defendant have a specific intent to kill, see: Ala. Code § 13A-6-2, this is a necessary element of the offense. Without proving that the defendant had the required 'mens rea', the state could not have obtained a conviction for this particular offense." Owen v. Alabama, 849 F.2d 536, 541 (11th Cir. 1988)

"The indictment omitting an allegation of the statutory intention fails to charge an offense.... a reference in an indictment to the statute defining the offense cannot be considered for the purpose of supplying an allegation of criminal intent which is an essential element of the offense and has been omitted from the indictment." Ex parte Harper, 594 So.2d 1181 (1991)

"A Statutory citation does not ensure that the grand jury has considered and found all essential elements of the offense charged. It therefor fails to satisfy the 5th Amendment guarantee that no person be held to answer for an infamous crime unless on indictment

of a grand jury." See: Hooker, supra.

"An indictment that failed to allege each material element of an offense failed to charge that offense." Cogman v. State, 870 So.2d 762

"The Alabama Supreme Court held that the indictment was void 'for its failure to charge an essential element of that offense.' " Ex parte Lewis, 811 So.2d 485 (Ala. 2001)

The Alabama Court of Criminal Appeals had affirmed Petitioners conviction using law that the Petitioner was not charged with.

The Supreme Court of the United States had ruled in Cole v. Arkansas, 333 U.S. 196, 201, 92 L.Ed 2d 644, 68 S.Ct. 514, "It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process." Furthermore, "It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made." Therefore, "To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court."

"These standards no more than reflect a broader premise that has never been doubted in our constitutional system: That a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend." E.g. Hovey v. Elliot, 167 U.S. 409, 416-420, 42 L.Ed 215, 17 S.Ct. 841

Petitioners incarceration is in violation of his 5th Amendment right that no person be held to answer for an infamous crime unless on indictment of a grand jury and in violation of his 14th Amendment right to due process under Cole v. Arkansas. Petitioners conviction is being upheld under a criminal statute he was not charged with. There is not a criminal statute in all of Alabama Code (1975) which charge (A person is guilty of committing the crime of _____ if he or she:)(1) did intentionally cause the death of another person.

The Petitioner's incarceration is unlawful and unconstitutional. Petitioner's conviction is due to be reversed and/or vacated and Petitioner be released immediately from his unlawful detention.

2) 28 U.S.C. (b)(1)(b)(i): There is an absence of available corrective process.

Attempt to present this petition in state courts will be futile. The petition will show that exceptional circumstances warrant the exercise of this court's discretionary powers.

The petitioner's arrest and prosecution resulted from fundamental unfairness. This consequently violated Petitioner's 4th, 5th and 14th amendment rights. Petitioner will show the arrest and prosecution was inconsistent with fair procedure.

Petitioner's defense to the incident is that he acted in self-defense. In 2006 the Alabama Legislature enacted the "Stand your ground" law amending the law on self-defense. At the time of Steele's arrest the law at the time for a person who claimed self-defense was:

Alabama Code (1975) § 13A-3-23(d): a person who uses force, including deadly physical force as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

The Merriam-Webster Dictionary (2005) defines immune. Immune: 1. Exempt, Petitioner was immune from criminal prosecution. Yet to prosecute the Petitioner, he first has to be arrested. The Alabama law at the time of Petitioner's arrest was:

Alabama Code (1975) § 13A-3-23(e): A law enforcement

agency may use standard procedures for investigating the use of force described in subsection (a) , but the agency may not arrest the person for using such force unless it determines that there is probable cause that the force used was unlawful.

The law enforcement agency that investigated the incident was the Sheriff Department of Choctaw County, Alabama. Tom Abate, the elected Sheriff at the time, arrested the Petitioner, obtaining an arrest warrant through fraudulent means.

Tom Abate filed a false report, the Incident/offense report, (Appendix B) violating Alabama Code (1975) § 13A-10-9: False reporting to law enforcement authorities.

Alabama Code (1975) § 13A-10-9 : False reporting to law enforcement authorities; (A) A person commits the crime of false reporting to law enforcement authorities if he knowingly makes a false report , or causes the transmission of a false report to law enforcement authorities of a crime or relating to a crime.

Tom Abate, in the "Narrative" part of the Incident/offense report, made several false statements. These false statements make it appear that Tom Abate was the first officer on scene. He could then claim that he had probable cause to the magistrate judge to obtain a warrant to arrest the petitioner. (Appendix C)

A handwritten "Narrative" labeled Investigator's Log shows that Deputy's Brealand and Thomas arrived at the scene at 20:53 MT. That "(Steele) was taken into custody" before "sheriff were notified." (Appendix D)

A note written by an unknown person as part of the investigation also shows

the chronological sequence. (Appendix E)

Tom Abate ID # is CWI as the arrest report shows. (Appendix F) In the chronological sequence it says, "21:35 - CWI 23"

Without showing the magistrate judge he was the first one on scene, thus becoming the "Res gestae witness", he would have to try and obtain an arrest warrant through hearsay. Therefore Tom Abate false statements made him the first one on scene.

The magistrate judge became an unknowing part of Tom Abate's plot to violate Petitioner's 4th Amendment Constitutional right and Article I, Section 5 of the Alabama Constitution that "the right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The false statements made, in the Incident/offense report, amount to a violation of Alabama Code (1975) 13A-10-103: Perjury 3rd degree.

Alabama Code (1975) 13A-10-103: Perjury 3rd degree; A person commits the crime of perjury 3rd degree when he swears falsely.

Alabama Code (1975) 13A-10-100: Definitions = (1) Swears falsely and false swearing; the making of a false statement under oath required or authorized by law, or the swearing or affirming the truth of such statement previously made which declarant does not believe to be true. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with the intent that it be uttered or published as true.

By signing the Incident/offense report, Tom Abate did, "hereby affirm that I have read this report and that all the information given by me is correct to the best of my knowledge." (Appendix B)

After this arrest obtained through illegal and fraudulent means, Petitioner was denied due process of law, a pre-trial hearing to determine Petitioner's immunity.

The Alabama Court of Criminal Appeals decided "that a defendant asserting immunity based on self-defense under 13A-3-23(d) Ala. Code 1975, is entitled to an opportunity to prove that claim by a preponderance of the evidence at a pretrial hearing before the court." Harrison v. State, 2015 WL 9263815, at *4 (Ala. Crim. App. Dec. 18, 2015)

The Alabama Supreme Court agreed, stating that a defendant has "a clear legal right" to prove self-defense at a pretrial hearing "before she is required to stand trial." Ex parte Walters, 2016 WL 6135232, at *5 (Ala. Oct. 21, 2016)

The Alabama Supreme Court has ruled, "Right to immunity is effectively lost if a case is erroneously permitted to go to trial, and since Alabama's law has always allowed a defendant to argue self-defense at trial, treating the right to immunity under subsection (d) as an affirmative defense would make that subsection redundant, the courts must presume that the legislature did not, enacting subsection (d), create a meaningless provision." Harrison v. State, Ala. crim. App. Lexis 97 (Ala. crim. App. Dec. 18, 2015)

The Alabama Supreme Court made clear in Hamilton v. Autauga County, 289 Ala. 419, 268 So.2d 30 (1972), that the legislative intent is "the all important or controlling factor," because under our system of government "the legislative intent constitutes law."

On August 23, 2011, D.A. Spencer Walker obtained "a true bill" (Appendix G) through fraudulent misrepresentation of material law to the grand jury in the indictment.

"The Grand Jury of Choctaw County charges, before the finding of this indictment, John H. Steele, whose name is otherwise unknown to the grand jury than as stated, did intentionally cause the death of another person, to-wit: William M. Aston III, by stabbing

him with a knife, in violation of 13A-6-2 of the code of Alabama, against the peace and dignity of the State of Alabama." (Appendix H)

Signed by, Spencer B. Walker, District Attorney, First Judicial Circuit.

Alabama Code (1975) 13A-10-101: Perjury 1st degree; (a) A person commits the crime of perjury 1st degree when in any official proceeding he swears falsely and his false statement is material to the proceeding in which it was made.

Alabama Code (1975) 13A-10-100: Definitions; (3) Oath - such term includes an affirmation and every other mode authorized by law of attesting to the truth of which is stated. For the purpose of this article, written statements shall be treated as if made under oath if: (A) The statement was made on or pursuant to form bearing notice, authorized by law, to the effect that false statement made therein are punishable.

D.A. Spencer Walker did draft the indictment in this case. He says so in a letter to the Alabama State Bar, Office of the General Counsel. (Appendix I) Petitioner had filed a complaint that D.A. Spencer Walker had violated Alabama Bar Association, Rules of Professional conduct, Rule 3.3; (and/or toward a tribunal: (a) a lawyer shall not knowingly (1) make a false statement of material fact or law to a tribunal.

The indictment is read to the trial jury, the tribunal. The indictment contains false material law, the charge. The charge detracts from the legislative intent of the law. It did not charge each essential element of the offense.

D.A. Spencer Walker wrote, "The indictment merely pleads with a little more

particularity the specific facts related to the offense," which is fine. Yet he is without power to change the language of the statute to fit the facts.

D.A. Spencer Walker, it appears, feels its ok to word the indictment differently as long as its pursuant to a code section. (Appendix I)

"A statutory citation does not ensure that the grand jury has considered and found all essential elements of the offense charged. It therefore fails to satisfy the 5th Amendment guarantee that no person be held to answer for an infamous crime unless on indictment of a grand jury." See: Hooker, supra.

In this letter (Appendix I) D.A. Spencer Walker made a false statement of material facts to the Office of the General Counsel. He states that, "... Mr. Steele became angry over Mr. Aston eating some food that had been purchased by the two men." There is no evidence of this stated fact anywhere.

D.A. Spencer Walker also states that he does not "review complaints issued in the circuit clerk's office at the District Court level. How is it then that he determines if he should prosecute or not?"

The indictment D.A. Spencer Walker did draft detracts from the legislative language of the statute and the legislative intent of the law. Such alteration by the State violates the well established rule "that while legislative language may be explained it cannot be detracted from or added to." State ex rel. Graddic v. Jensen, S. (U.K.) Ltd. Ala., 377 So.2d 940 (1979)

"An indictment that failed to allege each material element of an offense failed to charge that offense." Cogman v. State, 870 So.2d 762

The indictment in Petitioner's case (Appendix H) fails to charge the specific intent.

"The Alabama Supreme Court held that the indictment was void 'for its failure to charge an essential element of that offense.' Ex parte Lewis, 811 So.2d 485 (Ala. 2001)

The Supreme Court of the United States had ruled in Cole v. Arkansas, 333 U.S. 196, 201, 92 L.Ed 2d 644, 68 S.Ct. 514, "It is axiomatic that a conviction upon a charge

not made or upon a charge not tried constitutes a denial of due process." Furthermore, "It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made." Therefore, "To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court."

These violations were motivated by malice and not caused by mere inadvertence or poor judgement.

Tom Abate's false statements and the absence of a detailed "Narrative" in the Incident/Offense report, not showing probable cause, can infer malicious intent, with knowledge that it is false. The false statements were made deliberately as a part of a planned scheme of deception, maliciously tendering false information. A public servant, elected Sheriff Tom Abate, did knowingly falsify an official record, acting with corrupt intent, that is, done with knowledge that the act is wrongful and with improper motives, to mislead the magistrate judge.

D.A. Spencer Walker acted with an absence of caution with knowledge that he was presenting false material law to the grand jury and the trial jury with a reckless disregard for the truth and to mislead the court. The District Attorney, a public servant knowingly falsified the indictment, an official document, acting with corrupt intent, that is, done with knowledge that the act is wrongful and with improper motives, to obtain a benefit for another, to-wit: Tom Abate, to cause unlawful harm to another. The petitioner suffered extreme harm by the loss of liberty, his family and reputation.

The petitioner's incarceration is unlawful and unconstitutional. Petitioner's conviction is due to be reversed and/or vacated and Petitioner be released immediately from his unlawful detention.

"Thou shalt not bear false witness against thy neighbor." Exodus 20:16 (KJV)

Conclusion

The petitioner is submitting this petition in good faith. Petitioner is at a great disadvantage than the State. Petitioner has limited access to an inadequate and out of date law library. Petitioner is not educated in the law or procedures.

If the petitioner has committed a procedural mistake it is unintentional and should be considered harmless compared to the illegal actions done by persons who swore an oath to the rule of law and of the constitution and to uphold the law and constitution.

Petitioner's conviction and unlawful detention resulted from fundamental unfairness that consequently denied him his rights under the 4th and 5th amendments and the 14th amendment right to due process.

Relief Sought

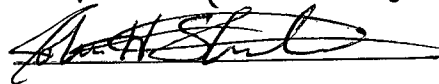
- 1) As specific relief Petitioner respectfully requests a plenary review and a De Novo review of this petition, the laws, rules and facts.
- 2) As specific relief Petitioner respectfully request for an attorney to be appointed by the court if further litigation is necessary.
- 3) As specific relief Petitioner respectfully requests this Honorable court to find Petitioner's incarceration unlawful and unconstitutional after a full review of the facts and for this Honorable court to order the Petitioner's release immediately after the reversal or vacating of his illegally obtained conviction.

4) As specific relief sought Petitioner respectfully requests that this Honorable court re-instate Petitioner's right to immunity under Alabama Code (1975) §13A-3-23(d), reverse or vacate the illegally obtained conviction with prejudice, and order the Petitioner's immediate release from his unlawful detention.

Prayer for Relief

Petitioner respectfully prays that this Honorable Court will grant the specific relief sought that this Honorable Court deems lawful and just. In God I trust.

Respectfully submitted,



John H. Steele

Executed on: October 9, 2019

John H. Steele, 284155

Bibb County Corr. Facility

565 Bibb Ln.

Brent, AL 35034