

No. 20-5750

IN THE SUPREME COURT OF THE UNITED STATES

CHESTER STAPLES,
Petitioner,

v.

BOBBY LUMPKIN,
Director, Texas Department of Criminal Justice,
Correctional Institutions Division

Respondant.

PETITION FOR REHEARING

CHESTER STAPLES
ID#01853049
264 FM 3478
Huntsville, TX 77320

Chester Staples
Petitioner Pro Se

12/7/2020

STATEMENT OF FACTS

At trial I, Chester Staples, was convicted of murder, Count 1; and, unlawful poss. of a firearm by a felon, Count 2. As shown by the "JUDGMENT OF CONVICTION BY JURY" sheet. (which this Court has a copy of, presented with app. for Writ of Cert.)

Charging Instrument

Statute for offense:

CT:1 19.02(b)(1) PC

INDICTMENT

CT:2 46.04 (a) PC

I present to this Court that the convicting Court presented to the jury a mixed instruction of statutes. That being 46.04 and 46.02. of the Tex. PC: the latter being; Unlawfully carrying a weapon. This statute was not alleged in the indictment. I, the defendant, lacked proper notice of statute 46.02 of the Tex. PC that was presented to the jury through the 'Charge of the Court.'

LEGAL AUTHORITY

A defendant may be tried only on the offenses alleged in the indictment. *Abdnor v. State*, 871 SW2d 726, 728 (Tex.Crim.App.1994). An indictment must provide sufficient notice of the offenses alleged to allow the defendant to prepare a defense. *Curry v. State*, 30 SW3d 394, 398 (Tex.Crim.App.2000). A jury charge may not authorize the conviction of the defendant on a theory permitted by the jury charge but not alleged in the indictment. *Reed v. State*, 117 SW3d 260, 265 (Tex. Crim.App.2003).

The Texas and the U. S. Constitution grant a criminal defendant the right to fair notice of the specific charged offense. The charging instrument must convey sufficient notice to allow the accused to prepare a defense. Chapter 21 of the Texas Code of Criminal Procedure governs charging instruments and provides legislative guidance concerning the requirements of adequacy of notice. With respect to informations, Article 21.21 T.C.C.P. sets out what facts must be included in an information and states,

in part, that the offense must be set forth in plain and intelligible words. Additionally, an information is required to include everything that is necessary to be proved.

I present to this Court that the above is a Fundamental Error. The Federal District Court stated that they were not to correct State Court errors. So I am asking this Court to review the complete Charge of the Court and Closing Arguments. They are presented with this motion.

Universal Declaration of Human Rights

Art. 3; Everyone has the right to life, liberty, and security of person.

Art. 8; Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or law.

Art. 2; Everyone is entitled to all the rights and freedoms set forth in this Declaration.

Pollock v. State 405 SW3d 396; 2013

An accused is guaranteed the right to be informed of the nature and cause of the accusations against him in all criminal actions.

U.S. Const. Amend. VI; Tex. Const. art. 1 § 10. The indictment must be specific enough to inform the defendant of the nature of the accusations against him so that he may prepare a defense.

Generally, a charging instrument that tracks the language of a criminal statute possesses sufficient specificity to provide a defendant with notice of a charged offense. But when a statute defines the manner or the means of commission in several alternative ways an indictment will fail for lack of specificity if it neglects to identify which of the statutory means it addresses.

CONCLUSION

I am asking this Court to review the information presented in this motion and grant the request for a rehearing. I ask this Court to issue an ORDER of Mandate to the Fifth Circuit Court of Appeals of the United States that it grant me a Certificate of Appealability.

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