

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

~~NO~~ 23-5362

Supreme Court, U.S.
FILED

JUN 28 2023

OFFICE OF THE CLERK

JERRY LEE BEALE, JR.,

PETITIONER,

VERSUS

STATE OF MISSISSIPPI,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

PETITIONER PRO SE:

JERRY LEE BEALE, JR., #228895

SMCI, AREA-2, UNIT B-1

P. O. BOX 1419

LEAKESVILLE, MS 39451

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- A. Whether the indictment is defective for failure to allege what act Beale committed in furtherance of his attempt to kill the officers?
- B. Whether the jury instructions constructively amended the indictment, requiring the jury find that Beale shot at the officers in his attempt to kill, an element not contained in the indictment?
- C. Whether the trial court erred when it allowed the state to introduce hearsay testimony through Officer Colin Hall which went to prove intent to kill the officers?

To the above questions-- Petitioner answers "YES."

LIST OF PARTIES

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

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the Mississippi Supreme Court had
affirmed conviction and sentence.
- APPENDIX B. Order of Supreme Court of Mississippi
Affirming the Court of Appeals --as to
conviction and sentence.

OPINIONS BELOW

The opinion of the Mississippi Supreme Court, denying Petitioner's Petition for a Writ of Certiorari, is attached as Appendix B.

JURISDICTION

The date of which The Mississippi Supreme Court decided Petitioner's case was May 18, 2023. A copy of That decision appears as Appendix B.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment To The United States Constitution requires the government to initiate prosecution of capital or otherwise infamous crimes by indictment.

U.S. CONST. 5th AM

The Fourteenth Amendment To The United States Constitution states in pertinent part, as follows: "No person shall be deprived of life, liberty, or property, without due process of law."

U.S. CONST. AM. XIV.

STATEMENT OF THE CASE

This case proceeds from the Circuit Court of DeSoto County, Mississippi, and a judgment of conviction entered against Jerry Lee Beale, Jr., for two (2) counts of attempted murder (C.P. 223, R.E. 7).¹ Beale was indicted in a three-count indictment for attempted murder of three (3) police officers after shooting in the vicinity of the officers as they responded to a domestic disturbance call (C.P. 11, R.E. 5). Following a 'jury trial'² on February 24-26, 2020, the Honorable Celeste Embrey Wilson, Circuit Judge presiding-- Beale was convicted of two (2) counts of attempted murder-- pursuant to Miss. Code Ann. § 97-3-19(1)(a) and sentenced to thirty-five (35) years on each count, to be served concurrently in the custody of the Mississippi Department of Corrections (C.P. 223, 248, R.E. 7, 9). The jury acquitted Beale on Count III, the attempted murder of officer Branson Vuncannon (C.P. 223, R.E. 7).

¹ C.P. Criminal proceedings, followed by page number-- R.E. Records Excerpts, followed by page number.

² Beale's first trial ended in a mistrial when the jury failed to agree on a verdict. This appeal to 2nd trial.

REASONS FOR GRANTING THE WRIT

In addition to the indictment being defective for failure to allege what act Beale committed in furtherance of his attempt to kill the officers; the jury instructions constructively amending the indictment--requiring the jury find that Beale shot at the officers in his attempt to kill, an element not contained in the indictment; and the trial court erred when it allowed the state to introduce hearsay testimony through officer Colin Hall--which went to prove Beale's intent to kill--- Beale would aver the following in further support of said claims, believe to have merit.

In the case sub judice-- the indictment in Count-1, alleged that Beale, "did wilfully, unlawfully and feloniously, attempt to kill officer Colin Hall, a human being; Jerry Lee Beale acted with the deliberate design to effect the death of officer Hall, but failed to successfully complete the act, in direct violation of Section 97-3-19(1)(a).³" In regards,

³ The language of counts-2 and 3, is identical, except for the name of the officer involved.

The attempted murder statute (Miss. Code Ann. § 97-1-7 (Rev. 2006)), reads as follows:

"Every person who shall design and endeavor to commit an offense, and shall do any overt act toward the commission thereof, but shall fail therein, or shall be prevented from committing the same, on conviction thereof, shall, where no other specific provision is made by law for the punishment of the attempt, be punished by imprisonment and fine for a period and for an amount not greater than is prescribed for the actual commission of the offense so attempted."

In the case at bar, the evidence shows that there was no proof positive presented by the state, to satisfy the essential element of 'intent to kill'. Even though there was testimonial evidence that Beale stated he wanted a shoot-out with police presented to the jury -- record shows that Beale never made such a statement. Further, there was no corroboration that Beale made the hearsay statement that "that he would kill police" as allegedly told to Officer Hall by Officer Mary Fite (whom also testified but not to this effect). Again, the state's alleged proffered evidence of 'intent to kill' (or injure for that matter) against Beale is non-existence. Beale is not guilty of attempted murder on police officers--

plain error, in violation of Beale's substantial rights, and to allow this conviction and sentence to stand, would call into serious question the fairness, integrity, or public reputation of judicial proceedings... U.S. v. Blandin, 435 F.3d 1191, 1195 (9th Cir. 2006); U.S. v. Evans, 478 F.3d 1332, 1338 (11th Cir. 2007); U.S. v. Rendon-Duarte, 490 F.3d 1142, 1146 (9th Cir. 2007); U.S. v. Hall, 515 F.3d 186, 194 (8d Cir. 2008); U.S. v. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th Cir. 2008); U.S. v. Burns, 526 F.3d 852, 858 (5th Cir. 2008); U.S. v. Garrett, 528 F.3d 525, 529-30 (7th Cir. 2008); U.S. v. Schalk, 515 F.3d 768, 776-77 (7th Cir. 2008); and, U.S. v. Banks, 514 F.3d 959, 974 (9th Cir. 2008).

Specifically, Beale is not guilty of the convicted crime of attempted murder on officer Mary Fite. As determined by the jury, the preponderance of evidence warranting the acquittal of officer Vuncannon, also warranted the acquittal of Beale of attempted murder on officer Mary Fite. The evidence shows that when Beale did eventually fire his weapon-- officer Fite was the first officer to run down the stairs to safety (Tr. 276)⁴ with officer

⁴ Trial Transcript, followed by page number

Vuncannon close behind her (to cover her back)-- officer Hall exited the apartment later-- after officers Fite and Vuncannon. Thus, at the least, Beale's conviction for attempted murder on officer Mary Fite, should be reversed... U.S. v. Olanoff, 507 U.S. 725, 731 (1993); U.S. v. Stonefish, 402 F.3d 691, 699 (6th Cir. 2005); and, U.S. v. Brown, 450 F.3d 76, 79 (1st Cir. 2006).

There were also inconsistent testimony by state witnesses that tends to exculpate rather than incriminate Beale. There was testimony--that at a crucial point, Beale open fire with his weapon pointed directly at officer Hall. There was later testimony that, at that crucial point, Beale had his weapon in the face of officer Fite (one weapon cannot be pointed in different faces at the exact same stage... There was also testimony that Beale was standing two (2) feet from the officers when he fired his weapon --- as opposed to testimony that Beale was at least six (6) feet from the officers when he fired his weapon. The question arising is how could Beale (or anyone else) miss shooting not one, but two (2) officers standing between two to six feet away? Beale missed hitting either officer, because he had no intent or malice against the officers, and fired warning shots rather than aimed projectiles. Beale's conviction and sentence,

[illegible]

CONCULSION

Will of certain issue bearing
Beale is not guilty of attempted murder on the
part of a woman named in 1917. In 1917
two (2) times (once by Hall and once by
Beale) he was shot otherwise than in the
course of a robbery, murder, or
other crime, and he was not
potentially, possibly, self-defense, or
otherwise. Besides, the record shows that

Beale was drinking and heavily intoxicated (i.e., potentially defensive underlying facts as to degree of guilt, etc.)... not attempted murder on police officers... U.S. v. ATKINSON, 297 U.S. 157, 160 (1936); U.S. v. BRYANT, 523 F.3d 349, 354 (D.C. Cir. 2008); and, U.S. v. Cardenas-Celestino, 510 F.3d 830, 833 (8th Cir. 2008).

WHEREFORE, Petitioner Beale respectfully prays that this Honorable Court issue its Writ of Certiorari, in this case.

Respectfully Submitted,

Jerry Beale Jr.
JERRY BEALE, JR.

SWORN TO AND SUBSCRIBED BEFORE ME,
This the 28th day of June, 2023.

[Signature]
"NOTARY PUBLIC"

03/11/2024
"MY COMMISSION EXPIRES"

