

No.

24-5692

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Jamie Patrick Hahn - PETITIONER

FILED

JUN 16 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

VS.

Timothy Ward, GDC Commissioner - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF GEORGIA

PETITIONER FOR WRIT OF CERTIORARI

Jamie Patrick Hahn

U.S. Army Veteran

c/o 1000952908

~~Walter State Prison~~ Wheeler Correctional Facility

P.O. Box 98 466

~~Rock Spring, Georgia 30778~~

Alamo, Georgia 30411

QUESTIONS PRESENTED

1. Will this Court review the validity of the indictment which is a double jeopardy violation by the filed date of return? As well as the court's lack of proof of return via minute (transcripts) which has been the law of Georgia for over 100 years?
2. Will this Court review the right and legality of the Georgia Supreme Court to re-write law and change what the General Assembly supplied as a defined legal term?
3. Will this Court review the standard of what constitutes proof of venue in terms of evidence needed at trial?
4. Will this Court review the standard of perjured evidence, what constitutes false evidence, and the remedy of such?
5. Will this Court review how the Sixth Amendment right to counsel applies to post-indictment interrogation and after an affirmative right to counsel has been made?

LIST OF PARTIES

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

Baldwin County Superior Court

Civil Action No. 21-SU-CV-50177 (Habeas Corpus)

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RELATED CASES

Hahn v. State 356 Ga. App. 79, 846 S.E.2d 258 (2020)

Hahn v. State 2021 Ga. LEXIS 176 (2021)

Hahn v. Georgia 2021 US LEXIS 4377 (2021)

Hahn v. State 338 Ga. App. 498 (2016)

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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

The opinion of the Baldwin County Superior Court appears at Appendix-A to the petition and is unpublished.

JURISDICTION

The date on which the highest court decided my case was April 16, 2024. A copy of that decision Appears at Appendix-M,

Was unable to File a petition For rehearing as Final decision was received 45 days after the decision by prison staff.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment II
United States Constitution Amendment VI
United States Constitution Amendment XIV

Georgia Constitution, Article I, Section I,

- Paragraph I: No person shall be deprived of life, liberty, or property except by due process of law.

- Paragraph II: Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied equal protection of the laws.

- Paragraph VII: All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, immunities due to such citizenship.

- Paragraph XVIII: No person shall be put in jeopardy of life or liberty more than once for the same offense except when a new trial has been granted after conviction or in case of mistrial.

O.C.G.A.

§ 1-3-1 (a) In all interpretations of statutes the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands,

(b) In all interpretations of statutes, the ordinary signification shall be applied to all words ~~sig~~ except words of art or words connected with a particular trade or subject matter which shall have the signification attached to them by experts in such trade or with reference to such subject matter

§ 1-3-3 ~~(c)~~ As used in this Code or any other law of this state, the term: (c) "child" or "grandchild" means legitimate descendants.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED - CON'T

§16-1-8 (a) A prosecution is barred if the accused was formerly prosecuted for the same crime based upon the same material facts, if such former prosecution (1) Resulted either in a conviction or an acquittal; or

§16-6-4 (a) A person commits the offense of child molestation when such person: (1) Does any immoral or indecent act to or in the presence of or with any child under the of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person; or

STATEMENT OF THE CASE

Mr. Hahn was convicted on Five counts of child molestation on May 18, 2018 in Decatur County Superior Court. The trial court sentenced Mr. Hahn to 20 years with 19 to serve in confinement and 1 on probation all counts merged upon a partial reversal on direct appeal.

Mr. Hahn initially indicted in 2011 on one count of child molestation to which he plead guilty and one count aggravated child molestation; which was nolle prossed after the Georgia Court of Appeals vacated Mr. Hahn's conviction. *Hahn v. State* 338 Ga. App. 498 (2016).

Upon the conviction above Mr. Hahn appealed the trial court ruling with a ruling of: sentence vacated and remanded back to trial court; all other claims denied, with the Georgia Supreme Court and United States Supreme Court declining to review.

Mr. Hahn then proceeded with a habeas corpus in Baldwin County Superior Court. After approximately 1½ years and filing of a Mandamus the court denied Mr. Hahn with a confusing and conflicting decision. (Appendix A) Appeal was made to the Georgia Supreme Court which was declined. (Appendix-M).

REASONS FOR GRANTING PETITION

In the Final order of the habeas corpus proceeding by Baldwin County Superior Court made numerous errors. See Appendix A.

The court Failed to properly review the application before it as Mr. Hahn raised each ground as constitutional error which, "habeas corpus is the exclusive post appeal procedure available to criminal defendant who asserts the denial of a Constitutional right. O.C.G.A. 9-14-41." Michum v. State 306 Ga. 878 (2019). (Citation and punctuation omitted.). Though at point ineffective assistance was brought up in conjunction with constitutional violations the court refused to review any claims under constitutional violations and only ineffective assistance.

The court also claimed the issues were procedurally barred because of not being raised on direct appeal though, "It is not the function of habeas corpus to review issues already decided by an appellate court nor is it the function of the Supreme Court to review, on denial of a writ of habeas corpus, issues previously decided on appeal." Brown v. Ricketts 233 Ga. 809 (1975). "When a constitutional challenge has not already been ruled on at trial or appeal and is thus not barred by res judicata, the defendant has not waived the defendant's right to raise the issue on habeas corpus." Hammock v. Zant 243 Ga. 259 (1979).

All the issues herein were raised as constitutional violations are to be heard in the context which the habeas court Failed to do so

Issue One

Double Jeopardy & No Record of Minutes of Return

The habeas decision by the lower court is in error and contradiction of itself. See Appendix A at 4. Proof is shown by the record of the case that (a) Federal and State Constitutional violation of double jeopardy and statutory double jeopardy; and (b) lack of subject matter jurisdiction for there is no record of indictment return upon the minutes of the court.

Habeas decision is fundamentally in error. The final order states, "Petitioner has shown evidence of constitutional or statutory violations making his incarceration unlawful from the return of his indictment in open court." See Appendix A at 4. Then follows in the next statement, "He offers no evidence or authority in support of his position". See Appendix A at 4. So which statement in the order is true. Then relies on *Townsend v. State* 357 Ga. App. 111 (2020) do further justify denial the double jeopardy but *Townsend* deals with merger of counts. The court failed to properly review the law in this matter. See Appendix A at 4.

(A) Double Jeopardy

Mr. Hahn was indicted in 2011 of child molestation and aggravated child molestation and convicted in November 2012, sentenced to 20 years to serve. See Appendix B. This conviction was overturned in August 2016, *Hahn v. State* 338 Ga. App. 498 (2016). The indictment Mr. Hahn is currently under is for the exact same charge — identical verbiage — and on the face of the indictment states its return as February 07, 2016. See Appendix C. The issuing of this indictment falls under double jeopardy because the original conviction had not been overruled. *Hahn v. State*. Mr. Hahn can not be indicted for the same offense

while under conviction of it. O.C.G.A. § 16-1-8(a)(1), U.S. Const. Amend. 5. As such the returned indictment of February 07, 2016 prior to the reversal of the conviction of 2012 violates double jeopardy.

The State wishes to claim that the file date is a scrivener's error, but offers no evidence of this. The clerk of court's file date is proof of a document's filing. "On its face the February 2013 indictment indicates that it was 'Received in open court from the sworn Grand Jury bailiff and filed in office' the 20th day of February 2013 indictment bears a file stamp indicating that it was returned/filed with the clerk of superior court on February 20, 2013... A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file and certified of the clerk entered upon the minutes paper at the time it is filed is the best evidence of such filing)." *Mosby v. State* 353 Ga. App. 744 (2020). (Citation and punctuation omitted). The date of return on the indictment - February 07, 2016 - is its proof of date of return and therefore unable to be a scrivener's error but evidence of its return.

(b) No Record of Minutes of Return

The South Georgia Judicial Circuit does not have the grand jury minutes to its proceedings; there is no record of the minutes of the court of a return of a true bill of indictment in this case. See Appendix D & H.L.T. page 8 Line 21-25, page 9 Lines 1-5)

"The Supreme Court of Georgia considers that the superior court acquires jurisdiction over a case upon the return of a true bill on the indictment and entry of the return on the minutes of the court." *State v. Averswald* 198 Ga. App. 183 (1990). See also *Gibson v. State* 162 Ga. 504 (1926). The Georgia Supreme Court has been very clear on the matter of jurisdiction

that if it was not recorded on the minutes the superior court lacks jurisdiction. "It is pointed out in the opinion that the clerks of the superior court are required to keep regular minutes of the court's proceedings from day to day... The foregoing authorities show that to render an indictment valid under the law of the State it must be returned by the grand jury or the sworn bailiff of the grand jury into open court and such return be entered upon the minutes of the court..." *Zugar v. State* 194 Ga. 285 (1942). (citation and punctuation omitted).

This is the law of the State and has been for a long time. Without those minutes the superior court does not have jurisdiction of the indictment and cannot take any action in regard to it. "Validity of an indictment may be challenged in a habeas corpus proceeding." *Hogan v. State* 261 Ga. App. 382 (2013).

As a result of the above the due process and double jeopardy clauses of the Federal and State Constitutions have been violated.

Issue Two

Ambiguous Statutory Definition

The habeas court is in error in its decision; specifically, the legal definition surrounding the term child in O.C.G.A. §16-6-4(c)(1), because the alleged victim is not the child of Mr. Hahn. The Court will be shown how the term child is to be defined by: statutory definition, legal definition - via law dictionary -, case law, and references

The General Assembly supplies a list of terms to be used throughout the entire OCGA so as not to confuse or allow alternate meaning, unless specifically supplied. The term child

is given a specific meaning in 1-3-3(6):

"As used in this Code or any other law of this State, the term:

(6) 'Child' or Grandchild' means legitimate descendent;"

With child being defined as legitimate descendant and the wording of the statute being plain its use is for all the laws of the State the General Assembly's intent is plain.

In this instance Title 16 has its own general provisions section with definitions specific to crimes in 16-1-3, where child is not redefined. Nor does 16-6-4 redefine the term. As such the definition in 1-3-3(6) must stand as the meaning of the term.

"At the outset we note that the OCGA 16-6-5.1 does not define the term 'teacher' and precedent from the Supreme Court of Georgia has left open the question of whether the statute applies to a substitute which lacks a teaching certificate... In the absence of a statutory definition of the term 'teacher' we must turn to the dictionary definition." State v. Rich 48 Ga. App. 67 (2019).

Whereas, in this case a definition was supplied in 1-3-3(6) which is to be enforced with the OCGA as a whole. "In interpreting a statute a court must presume that the General Assembly had full knowledge of the existing state of the law and enacted the statute with reference to it." Evans v. State 334 Ga. App. 770 (2015). "Statutes must be construed constructed with reference to whole system of which it is apart." Alison v. Domain 158 Ga. App. 542 (1981).

The lower court used *Staley v. State* 284 Ga. App. 873 (2015) to reject this claim. In *Staley* § 13-1(a) was used to rule adversely to the claim. Unfortunately the court did not consider that the legislature having "Full Knowledge" (*Evans v. State*) of 1-3-3(6) when it created 16-6-4 and by that knowledge it must stand to reason that the legislature used the term child with the definition it had already supplied, to do otherwise would make it pointless and "... that courts are prohibited from interpreting a statute in a manner that renders any of the language superfluous, ineffectual, or meaningless." *Clark v. State* 328 Ga. App. 268 (2014).

The use of *Staley* and its decision are in error on two main points: (a) interpretation of a statute in which the legislature already supplied a definition; and (b) interpretation does not meet standard of evaluation or meaning of the term but rather an agenda.

(a) When the court is asked to interpret a word no legislative meaning is attached, which leaves it up to the courts to supply a meaning. "The phrase 'relevant similar transaction' is not defined in O.C.G.A. § 17-10-6.2... In determining the Legislature's intent, we must first begin with the text of the statute." *Evans v. State*; see also *Clark v. State*. Interpretation is not needed here but the acknowledgement of what is written.

"Where the language is plain and admits no more than one meaning the duty of interpretation does not arise, and the rules which are to aid doubtful meaning need no discussion." *Coninetti v. United States* 242 U.S. 470, 486, 61 L. Ed. 442, 37 S. Ct. 192. (Citation and punctuation omitted). "In any event canons of construction are no more than rules of thumb that help courts determine the meaning of legislation and in interpreting a

Statute a court should always turn first to one cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means what it says there." *Connecticut v. United German* 502 US 249 (1992); see also *Carr v. United States* 560 US 438 (2010). The ruling in *Staley* is in error because a definition was supplied by the legislature and the court does not have the power to change what it is given. This situation is similar to *Abdulkadir v. State* 279 Ga. 122 (2005):

"Under Georgia law the term 'rape' is not only plain and unambiguous it is also statutorily defined... while there may be compelling policy reasons to apply the rape shield statutes to prosecutions for crimes other than rape the statutes terms state that it applies to prosecutions of rape. That singular distinction by the legislature indicates that the rape shield statute is excluded from prosecution for all other crimes than rape. A court of law is not authorized to rewrite the statute by inserting additional language that would expand its application to other crimes. Any expansion of the rape shields applicability must come from the legislature as it alone is entrusted with the authority to amend existing laws."

The question of rape was properly ruled upon in this case because a definition was supplied; which is the same as the definition of child in this case.

(b) The court's determined new meaning of the term child that is assigned to 16-6-4(a)(1) does not follow standard guidelines nor previous court rulings. The court's attention is directed to the term child. "In the absence of statutory

definition... we must turn to the dictionary definition." Rich v. State.

Ballentine's Law Dictionary 3rd Edition:

- Child. a son or daughter of a person;
- Children. the sons or daughters of one... it means prime facie, legitimate offspring... the term children ordinarily means descendants of the first degree

Black's Law Dictionary 6th Edition:

- Child, children. Progeny; offspring of parentage

Both dictionaries support 1-3-3(6) that the term child is your biological sons or daughters.

Following this train of thought one must take into account 1-3-1(b). That is why "the ordinary popular and legal sense of the word 'children' embraces only the first generation of offspring." *Wilson v. Jenkins* 30 Ga. 167 (1950). "'Child' means as a general rule legitimate children." *Hicks v. Smith* 94 Ga. 809, 22 S.E. 153 (1895); "Child" means a son or daughter, whether by birth or adoption." *Florida Dept. of Health & Rehab. Services v. Friends of Children, Inc.* 653 F. Supp. 1221 (1986). "It is well settled at common law the word child and children mean only legitimate children." *Floyd v. Floyd* 97 Ga. 124, 24 S.E. 451 (1895); see also *Georgia RR and Banking Co.* 117 Ga. 168, 43 S.E. 452 (1903); The court must use the ordinary meaning acknowledged by statute, law dictionaries, and case law, "it is a fundamental principle of statutory construction that the courts must give words their plain and ordinary meaning." 1990 Op Att'y Gen. No. 70-6.

The court must keep in mind at all times when looking into the meaning of a statute or term it must lean in favor

of who's liberty is at risk and against the State. "Further, even if judicial construction of this statute had been authorized, it is axiomatic that the courts must strictly interpret penal statutes against the State, and more importantly, that courts are prohibited from interpreting a statute in a manner that renders some of the language superfluous, ineffectual, or meaningless." *Clark v. State*; see also *Hammond* 325 Ga. App. 815 (2014); and *Coats v. State* 304 Ga. 324 (2018). "As our Supreme Court has made clear, where a criminal statute 'is susceptible to more than one reasonable interpretation, the interpretation most favorable to the party facing criminal liability must be adopted.'" *State v. Rich* 348 Ga. App. 467 (2019). (citation and punctuation omitted).

The Georgia Supreme Court used the "Absurdity Doctrine" to justify its ruling claiming it would lead to absurd consequences by ruling in favor of the defendant in *Staley*. It is pointed out that a doctrine is just a principle of law and not law itself. That is an important distinction. "For example in the above Georgia case (reference to *Staley*) the court rewrote 'legitimate descendant' as 'any child'; however, instead of admitting what it was doing it actually declared that it was complying with, and not contradicting legislative intent. Of course, rewriting the plain language of a statute is by definition, contradicting the legislature..." Article: The New Absurdity Doctrine. 125 Penn. St. Rev. 353.

It is clear that the Georgia court's went outside their authority to rewrite statute and doing such violates constitutional due process.

Issue Three

Failure To Prove Venue

At no time during trial was the jury presented with evidence that a crime was committed within its jurisdiction. "Like every other material allegation in the indictment, venue must be proven by the prosecution beyond a reasonable doubt." *Lee v. State* 305 Ga. App. 214, 10 FCDR 2546, 389, 699 S.E.2d 389 (2010). This element of the indictment must be proven same as the element of alleged offense as well.

During trial vague references are made about Bainbridge with no indication of where in the city the offense occurred nor if this city was within the limits of Decatur County. See Appendix-E Trial Transcripts:

"(Q) And he was commuting from Bainbridge? (A) Yes sir." T.T. pg 106 line 12-13.

"(Q) And this home that you lived in and the bed where this occurred, is it in Decatur County, Georgia? (A) Yes sir." T.T. pg 110 Line 19-21.

"(Q) Let me show what's been marked as States Exhibit 1 and ask if you recognize that document? (A) Yes sir, I do. (Q) What do you recognize that as? (A) That's a waiver of consent to conduct a Search Form from the Decatur County Sheriff's Office signed by Mrs. Jeannie Hahn and dated on 7/25, 2011 at 19:47 hours regarding 178 Mills Road, Bainbridge, Georgia." T.T. pg 163 Lines 2-9.

"(Q) Let me show you what I marked as State's Exhibit 2 and ask if you recognize that. (A) Yes sir, I do recognize this document. (Q) What is it? (A) This is a Decatur County Sheriff's Office receipt for property. (A) Does it show that you received some property? (A) Yes sir. It shows that on 7/25, 2011 at approximately 20:05 hours, which would be 8:05 p.m. I received all bedding from

the juvenile victim's bedroom located at 178 Mills Road." T.T. pg 163
Lines 13-23.

From the trial transcripts the alleged victim stated that Mr. Hahn commuted to work from Bainbridge and that the alleged offense occurred in Decatur County. T.T. pg 106 and 110. No indication is given to where the offense actually occurred. Ms. Sullivan makes reference to Bainbridge at T.T. pg 103 Lines 2-4. At no point does the alleged victim give a location inside of Decatur County for the offense against her. "As the Supreme Court of Georgia has held [b]y standing precedent proving ~~venue~~ that a crime took place in a city, without also proving that the city is entirely within a county does not establish venue." Powers v. State 309 Ga. App. 262 (2011). Citation and punctuation omitted).

At no point during trial did Ms. Sullivan nor any other family member testify that the offense took place at 178 Mills Road. The street address was given only by the investigator and is insufficient to prove venue. "A street name, standing alone, is never sufficient to establish venue because streets frequently run through more than one county." (punctuation and citation omitted). Powers v. State.

This is not enough to prove venue as presented by the Georgia Court of Appeals and Supreme Court of Georgia. The State failed to meet its burden of proof on the venue portion of the indictment and by doing so failed to prove that the court had jurisdiction.

Issue Four

Falsified Evidence by the State

The State claimed that Mr. Hahn's DNA was collected from Ms. Sullivan's mattress cover in her bedroom which was from a queen size bed. When proven to be false the State's Attorney General's office claims that this false evidence is of no consequence. Below is the record proving

that the DNA evidence used was falsified:

"(Q) She also I believe -- and this may have been in her -- in a statement to a child advocate -- I'm sorry, but she also referred to acts of molestation that she said happened in a queen size bed, that it was easier for Jamie to mess with her once she got a queen size bed? (A) (Reviewing document.) Yes she made that statement to Captain Croley." Pre-Trial Transcripts (P.T.T.) pg 30 line 5-8. (see Appendix-F).

"After his arrest, the police department or the sheriff's department, they went in and with a search warrant or actually, a consent to search Emily Sullivan's bed and got her bed clothes, got her bed sheets, and her mattress cover and took them back to the sheriff's department to do a forensic evaluation on the bedding." T.T. page 88 Lines 15-20.

"(Q) And did anyone from the sheriff's office come out to your home? (A) Yes, sir. (Q) Who was that? (A) I think it was Mr. Phillips. (Q) Terry Phillips? (A) Yes. (Q) What did he come out for? (A) He came out to get some evidence. He came and took things from the house. (Q) And you gave him permission to do that? (A) I did. (Q) Where the things he got the bedding from Emily's room? (A) Yes, he took the bedding from Emily's room." T.T. page 137 Lines 19-25 and page 138 Lines 1-8.

"(Q) Did Terry in fact take the bedding? (A) He did... (Q) Do you recall, were there sheets on there, a mattress pad? (A) Oh, yes sir. I do know that we had just bought her a brand new bed and put a brand new mattress pad, sheets, and comforter... (Q) But they took the sheets and the mattress cover? (A) Yes, sir." T.T. page 138 Lines 24-25, page 139 Lines 3-7, and lines 21-22.

"(A)...I received all bedding from juvenile victims bedroom... (Q) That would be Emily Sullivan's bed? (A) Yes, sir." T.T. Page 163 lines 20-25

"(Q) And was it your understanding this bedding came from the address on the sheets? (A)... That was my understanding. (Q) And was it told to you also that it came off of the bed of Emily Sullivan? (A) That is correct. I was informed." T.T. page 168 ~~22-2~~ lines 22-25 and page 169 line 1.

As the transcripts show the State claims to have recovered a queen size mattress cover from Ms. Sullivan's bed and it contained Mr. Hahn's DNA. This position was maintained from pre-trial and trial witnesses up until the GBI Forensic specialist.

"(Q) We're talking about a mattress cover, right? (A) Yes. (Q) Was it a queen size, do you recall? (A) It was a twin. (Q) Twin size..." T.T. page 202 lines 17-21.

The GBI Forensic specialist calmly and without a doubt contradicted the State when asked what size mattress cover that was in evidence - up until this point every witness had agreed that the evidence collected came from Ms. Sullivan's bedroom and that it was a queen size bed. The State's Exhibit 2 at trial is the property receipt stating "All bedding from juvenile victim room" which is a queen size bed according to the sheriff's office and family members. (See Appendix - G)

The GBI Forensic specialist stated that she did not examine a queen size mattress cover but a twin, which records show was never collected as evidence.

The fact that the State claimed to have DNA evidence belonging to Mr. Hahn from the alleged victim's bedding prejudiced Mr. Hahn to the jury by having falsified evidence used against him. "A conviction obtained through the knowing use of prejudured or false evidence is fundamentally unfair and must be over turned if there is a reasonable likely hood that the false testimony or evidence could have affected the jury's verdict." Warren v. Cockrell 2003 U.S. Dist. Lexis 395. See

also Nobles v. Johnson 127 F.3d 409 (1997) and Giglio v. United States 32 L. Ed. 104 (1972).

The State knew that the evidence was false as soon as the GBI testified to it. Mr. Hahn's counsel had to have known this was false evidence as well. Too much time was spent setting up the fact that the evidence was a queen size mattress cover for no one to have realized this major discrepancy. Especially considering that it came from the only person who was not employed by Decatur County Sheriff's Office, District Attorney's Office or the alleged victim's family.

Mr. Hahn's conviction should be overturned because the State relied upon heavily the DNA from this falsified mattress cover in the prosecution of the case. This is directly against the due process and equal protection clauses of both the State and Federal constitutions.

Issue Five

Denial of Sixth Amendment

On July 25, 2011, prior to his arrest or the appointment of counsel, Mr. Hahn was twice interviewed by the Decatur County Sheriff's Office. First, Investigator Redell Walton interviewed Mr. Hahn; a little while later he was interviewed by investigator Julian Crowder as part of a Voice Stress Analysis. Prior to either interview, Mr. Hahn completed a "Decatur County Sheriff's Office Criminal Investigative Division Waiver of Rights Form." (see Appendix - H). Above its Waiver section, that form informed Mr. Hahn of, *alio*, his rights to counsel. The form indicated to Mr. Hahn the anticipated subject of his interview: "Child Molestation" on the first form and "Accusation of Child Molestation of Emily" on the second. *Id.* Mr. Hahn waived his right to counsel at this time and proceeded to speak to the investigators.

Mr. Hahn was subsequently arrested and charged with Child Molestation

He later made application For public defender services and Ernie Sheffield, Chief Public Defense of the South Judicial Circuit, was appointed to represent him on August 12, 2011. On November 15, 2011 Mr. Hahn was indicted in Decatur County case number 11-CR-220. On December 15, 2011 Mr. Hahn, through his attorney Ernie Sheffield, Filed a waiver of arraignment in that case, entering a plea of Not Guilty, and demanding a jury trial.

Decatur County case 11-CR-220 proceeded to trial on February 6, 2012. Mr. Hahn was not in court and a bench warrant issued. Ernie Sheffield was present in court as Mr. Hahn's attorney when the bench warrant issued, and Decatur County Sheriff's Office was aware of this. Sheffield remained the attorney of record throughout Mr. Hahn's flight and upon his return to Georgia.

On April 7, 2012 Mr. Hahn was arrested in Glasgow, KY in connection with possession of child pornography. After arresting Mr. Hahn, Lt. Jimmy Phelps of the Glasgow Police Department consulted with Decatur County Investigator Redell Walton and learned of the Decatur County child molestation case, and his fugitive status. Lt. Phelps subsequently interviewed Mr. Hahn.

At the interview start, after mentioning to Mr. Hahn that he was "wanted out of Georgia," Lt. Phelps told Mr. Hahn "I'm going to have to read you something because somethings have come up here." (See Appendix-I). Lt. Phelps then reviews his Departments Miranda Warning Form with Mr. Hahn. Lt. Phelps told Mr. Hahn "by signing that, that's just states that you're waiving your right to an attorney at this time." (see Appendix-J).

The Glasgow Police Department Form did not identify the scope of the interview, nor which criminal case or cases would be under discussion. The Form was headed with the information and logo of the Glasgow Police Department, did not specify which criminal case or cases gave rise to Mr. Hahn's right to counsel

Lt. Phelps proceeded to interview Mr. Hahn limiting himself to the Kentucky child pornography case for the first several minutes of the interview. Initially, Lt. Phelps seems inclined to leave the Georgia child molestation case to the investigators of the Decatur County Sheriff's Office, telling him "if you did that, you need to tell them. You need to be honest with them as well." (Id at I). At one point explaining why he had come to Kentucky, Mr. Hahn stated "I think my attorney just scared the hell out of me," to which Lt. Phelps replied, "Who your attorney?" (Id at I) Lt. Phelps had actual knowledge that Mr. Hahn was represented by counsel.

Lt. Phelps was apparently still inclined to leave the investigation of this case to the Decatur County Sheriff's Office when he said "You need to cooperate with the guys in Georgia like your cooperating with me." (Id at I). A little while later, however, Lt. Phelps gathered his paperwork, and left the interview room for a few minutes. Upon re-entering the room Lt. Phelps said to Mr. Hahn "I went over your rights and you understand. You're willing to talk with me." (Id at I). It was only then that Lt. Phelps broached the subject of the Georgia child molestation case. In the remainder of the interview Mr. Hahn made statements that tend to incriminate him in this case.

A few days later on April 12, 2012 Lt. Phelps re-interviews Mr. Hahn. When Lt. Phelps initially sat down with Mr. Hahn, Lt. Phelps told him "I don't have a rights waiver for you to sign but I am going to read them to you ok?" (Appendix-K). Lt. Phelps then read a Miranda Warning to Mr. Hahn before asking, "For the record you are verbally waiving your right to an attorney at this time, correct?" (Id at K). As can be heard on the audio recording, Mr. Hahn seemed to respond to this question with "Yes sir", although the interview does thereafter proceed for several minutes. Approximately thirteen minutes into the interview, the first audio recording stops.

The interview continues into a second audio recording, in which Lt. Phelps resumes his interview of Mr. Hahn after sometime out of the room.

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Narrating for the benefit of the audio recording Lt. Phelps explained that an interview had already begun, and that he had read Mr. Hahn his rights. He asked Mr. Hahn "You waived your right to an attorney? Verbally" to which Mr. Hahn replied "Yes sir." (Id at 10). Lt. Phelps went to complete a written Miranda waiver with Mr. Hahn. Rather than the Glasgow Police Department Form that Lt. Phelps had previously used, the April 12 Form appears to be an image of the front of a Miranda warning card, printed off the Internet. (see Appendix-BL). Like the Glasgow Police Department Form, this Miranda warning card did not specify the scope of the contemplated interview, nor which criminal cases the right to counsel related. As he read the card aloud, Lt. Phelps made no comment to clarify these points. (Id at 10). After discussing the Miranda warning card the interview continued for about another hour, over the course of which Mr. Hahn made statements that tend to incriminate himself in the Georgia case.

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall... have the Assistance of Counsel for his defense." (U.S. Const. Amend. VI). A defendant "is denied 'the basic protections' of the Sixth Amendment 'when there is used against him at his trial evidence of his own incriminating words, which Federal agents...deliberately elicited from him after he had been indicted and in the absence of his counsel.'" *Feller v. United States* 540 US 519 (2004) (quoting *Massiah v. United States* 377 US 201 (1964)).

Because the Sixth Amendment right to counsel, unlike the Fifth Amendment right to remain silent, is not limited to circumstances in which the defendant is compelled to offer evidence against himself, Sixth Amendment analysis does not necessarily turn on the voluntariness of the defendant's statement, *Fellers* at 525. Instead, when considering whether a defendant's rights under the Sixth Amendment have been violated, courts consider whether law enforcement officers "deliberately elicited" information from the defendant outside the presence of counsel, after the institution of adversarial proceedings against him. *Fellers*, at 524-525. In *Georgia*

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Formal adversarial proceedings have been held to have been instituted only after the defendant is indicted. *Spencer v. State* 252 Ga. 338 (1984).

While "the definition of 'interrogation' under the Fifth and Sixth Amendments...are not necessarily interchangeable" (*Rhode Island v. Innis* 466 US 291 (1980)), there can be no question that an investigator's series of direct questions concerning a criminal case "deliberately elicit" information from Mr. Hahn. *Fellers* at 524.

Because Lt. Phelps deliberately elicited information from Mr. Hahn, outside the presence of counsel, about five months after his indictment in Decatur County case 11-CR-220, Mr. Hahn's Sixth Amendment right to counsel is clearly implicated by interviews in Kentucky.

In *Michigan v. Jackson* the United States Supreme Court held that "a request for counsel at an arraignment should be treated as an invocation of the Sixth Amendment right to counsel" at every critical stage of prosecution, "...despite doubt that the defendant actually intended their request for counsel to encompass representation during any further questioning"... because doubts must be resolved in favor of protecting the constitutional claim." *Montejo v. Louisiana* 556 US 788 (2009) (discussing *Michigan v. Jackson* 475 US 625 (1986) (citation omitted)). Subsequently, where investigators initiated contact with a defendant whose Sixth Amendment right to counsel has attached, i.e. an indicted defendant, and deliberately elicited information from him, for example by interrogation of him, any waiver of counsel was presumed to be invalid, and the resulting interrogation was inadmissible. *Jackson* at 636. *O'Kelley v. State* 278 Ga. 564 (2004). However that rule has since been overruled. *Montejo v. Louisiana* 556 US 778 (2009). *Bowman v. State* 341 Ga. App. 784 (2017).

Montejo concerned a Louisiana defendant charged with murder, who, after a "72 hour" preliminary hearing was Mirandized before agreeing to help police locate the murder weapon and to write an apologetic letter to the victims widow. *Montejo* at 780-782. Per Louisiana law, the judge

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at the 72-hour hearing automatically appointed counsel to Montejo, *Id.* at 781. Montejo had stood mute at the hearing; he had not affirmatively requested counsel, or otherwise asserted his Sixth Amendment rights, *Id.* at 782.

"The only question raised by Montejo... is whether courts must presume that such a waiver of rights to counsel by represented defendant is invalid under certain circumstances." *Id.* at 787. Noting that the Jackson rule did not contemplate states like Louisiana, where counsel is automatically appointed in the absence of an affirmative request by the defendant, the court on Montejo overruled Jackson. Consequently, there is no longer a presumption that a defendant's waiver of his Sixth Amendment right to counsel, made after the appointment of counsel, is necessarily invalid.

However, Justice Scalia, in remanding Montejo to the state court, specifically noted that Montejo's self-incriminating statements might still nevertheless be inadmissible. "Even if Montejo subsequently agreed to waive his rights, the waiver would have been invalid had it followed an 'unequivocal election of the right.'" Montejo at 797 (quoting *Texas v. Cobb* 532 US 175 (2001)). "Montejo may also seek on remand to press any claim he might have that his Sixth Amendment waiver was not knowing and voluntary." Montejo at 798.

The Montejo rule - i.e. overruling Jackson's presumption that a counseled defendant's Sixth Amendment waiver is invalid - was recently applied by the Georgia Court of Appeals *Bowman v. State* 341 Ga. App. 784 (2017). The defendant in that case did not assert his Sixth Amendment right to counsel by requesting an attorney, but had instead erroneously told a magistrate that he has hired counsel. *Bowman* at 784. In fact Bowman had only retained a lawyer to represent him in an unrelated matter, *Id.* Applying the Montejo rule, the Bowman court held that even if "Bowman's Sixth Amendment right to counsel had attached at first appearance hearing this alone did not invalidate his waiver of rights during the police initiated interview... moreover, the record supports the trial

COURT'S Finding that Bowman freely and voluntarily gave his statement in an interview after being informed of his right to an attorney. *Id.*

Because Montejo permits represented defendant to waive counsel and proceed, without the presence of his lawyer, to be interrogated by the police, the admissibility of Mr. Hahn's statements in Kentucky therefore turns on whether Mr. Hahn validly waived his Sixth Amendment right to counsel in relation to the Decatur County charges when he spoke to Lt. Phelps. The State had the burden of proof of establishing that a defendant validly waived his right to counsel. *Brewer v. Williams* 430 US 387 (1997). "The determination of whether there has been an intelligent waiver of rights to counsel must depend, in each case upon the particular facts and circumstances surrounding the case, including the background, experience and conduct of the accused." *Johnson v. Zerbst* 304 US 458 (1938). The trial judge must determine "whether there is an intelligent and competent waiver by the accused." *Id.* at 465. Indeed the court should "include every reasonable presumption against waiver by the accused." *Id.* at 465. Indeed, the court should "indulge every reasonable presumption against waiver of fundamental constitutional rights." *Id.* at 464.

In this case Lt. Phelps' two interviews of Mr. Hahn implicated his Sixth Amendment right to counsel. Those interviews were conducted in April 2012 after his indictment in November the year before. Mr. Hahn had already affirmatively asserted his right to counsel by requesting a public defender, Mr. Hahn had legal representation in the person of Ernie Sheffield. He had already entered a Not Guilty plea and demanded a jury trial and through Mr. Sheffield. Unlike the defendant in Montejo who stood mute at his 72 hour hearing or the defendant in Bowman who wrongly claimed to have hired an attorney, Mr. Hahn had already unequivocally invoked his right to counsel, rendering his subsequent waiver invalid. See Montejo at 798.

Even assuming arguendo that Mr. Hahn's assertion of his Sixth Amendment right to counsel did not render his waivers of counsel in Kentucky invalid, those waivers nevertheless are not knowing, intelligent, or competent waivers of his Sixth Amendment right to counsel. Zerk at 465, *Faretta v. California* 422 US 806 (1975). The language of the Kentucky Forms do not sufficiently advise the precise rights Mr. Hahn purportedly waived by signing them. Those Forms do not address themselves to Mr. Hahn's Sixth Amendment right to counsel in Decatur County case 11-CR-220. As outlined above, the Sixth Amendment guarantees a defendant the right to counsel at every critical stage of the prosecution after the institution of adversarial proceedings. In April 2012 Mr. Hahn therefore had a right rooted in the Sixth Amendment to have Mr. Shetfield present for any interrogation concerning case 11-CR-220. However, at that time he did not have a Sixth Amendment right to require Kentucky to appoint an attorney to be present for an interrogation concerning charges there. This is because that case was not yet indicted when Lt. Phelps interviewed him adversarial proceedings had not yet been instituted and Mr. Hahn's Sixth Amendment right to counsel vis-a-vis his Kentucky charges had not yet been vested. To be sure this is not to say that Mr. Hahn had no right to counsel in his Kentucky charges when Lt. Phelps interviewed him. Through *Miranda v. Arizona* 384 US 436 (1966) Mr. Hahn facing custodial interrogation in an unindicted case had a Fifth Amendment right to counsel in Kentucky case.

As of April 2012 Mr. Hahn therefore had three distinct rights to have counsel present for his interrogation; Fifth Amendment right to counsel relating to his Decatur County child molestation case; a Sixth Amendment right to counsel relating to his Decatur County child molestation case, and a Fifth Amendment right to counsel relating to his Kentucky case. Which rights to counsel then did Mr. Hahn purportedly waive when he signed the Kentucky waiver Form?

The State of course would argue that because the Forms employ broad language, Mr. Hahn waived all of them by signing the Forms. Such sweeping analysis though not only flies in the face of the authority favoring "every reasonable presumption against waiver of Fundamental constitutional rights" but also contradicts the particular facts and circumstances surrounding the Kentucky waivers. *Zerbst* at 464.

Looking at the language of the Kentucky Forms they each advise that Mr. Hahn has a right to have an attorney present and that an attorney may be appointed. The reasonable interpretation of this is that the Kentucky court would appoint a member of the Kentucky BAR to assist Mr. Hahn with his Kentucky case. After all it was Kentucky law enforcement officer reviewing the Form with Mr. Hahn. The Form in Kentucky reading from a Form headed with the indicia of the Glasgow, Kentucky Police Department.

Indeed, both Kentucky Forms were titled "Miranda Warning" on their faces the Forms address themselves to Fifth Amendment rights, secured by Miranda, rather than Sixth Amendment rights. (*Id.* at J and H). This is surely not an accident. Both Kentucky Forms were likely drafted with pre-indictment custodial rights in mind, as such interrogations are common criminal investigations, whereas post-indictment interrogations are exceedingly rare.

More over, Lt. Phelps' own words introducing the April 7 Form indicate that Form only related to Mr. Hahn's Fifth Amendment rights relating to his Kentucky case. "I'm going to have to read ~~something~~ you something." Lt. Phelps told Mr. Hahn, "because somethings have come up here." (*Id.* at I).

It is worth noting that, when discussing the Kentucky Forms with Mr. Hahn, Lt. Phelps pointed did not mention either the Decatur County child molestation case, nor the attorney assigned to the matter.

The investigators of the Decatur County Sheriff's Office, with whom Lt. Phelps had been in contact with, knew that Mr. Hahn was represented by Mr. Sheffield. Moreover, Lt. Phelps own comments revealed that he himself knew Mr. Hahn had an attorney. (Id at I). Knowing Mr. Hahn already had counsel in connection with the Decatur County child molestation case, Lt. Phelps could have asked Mr. Hahn if he wanted that attorney to be present for the interrogation. Doing so would have given Mr. Hahn an unambiguous opportunity to knowingly and intelligently waive his Sixth Amendment right to have Mr. Sheffield present. It is therefore extremely significant that Phelps declined to even refer to Mr. Hahn's Decatur County child molestation case or his attorney in that matter when reviewing the Kentucky Forms.

The reasonable interpretation of the Kentucky Forms, considering both the language of the Forms themselves as well as the fact and circumstances surrounding them, is that signing them, Mr. Hahn waived his Fifth Amendment rights relating to his Kentucky case. The Kentucky Form neither advised Mr. Hahn of his Sixth Amendment right to counsel relating to the Decatur County child molestation case nor did they contemplate the waiver of that right. Insofar as the Forms employ broad, ambiguous language which the State argues does embrace that Sixth Amendment right to counsel, such an argument not only relies on an unreasonable interpretation of the Forms, but also fails to overcome "every reasonable presumption against waiver of fundamental constitutional rights." Id Zerkst. The State cannot carry its burden in establishing valid waiver of Mr. Hahn's Sixth Amendment right to counsel at the Kentucky interrogations.

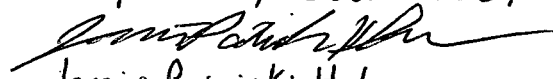
Because Mr. Hahn prior to his post-indictment interrogations, had unequivocally asserted his Sixth Amendment right to counsel and because the Kentucky Forms did not constitute a valid waiver of that Sixth Amendment right to counsel, the April 7 and 12 interrogations, including the letters and written statements made in the course of those interrogations are inadmissible.

CONCLUSION

The arguments and evidence presented herein have shown just cause for this Court to grant this petition for the Constitutional violations fly in the face of previous decision of this Court; and the states Vagrant disregard of the law has led to a miscarriage of justice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jamie Patrick Hahn

U.S. Army, Veteran

Date: 16 June 2024

APPENDIX - A

BALDWIN COUNTY- ORDER DENYING PETITIONER'S
APPLICATION FOR WRIT OF HABEAS CORPUS