

IN THE UNITED STATES SUPREME COURT

COMMONWEALTH OF PENNSYLVANIA
Respondents

v.

VINCENT DAVIS,
a/k/a TERRELL STRONG
Petitioner

PETITION FOR WRIT OF CERTIORARI

APPEAL FROM THE VOID JUDGMENT IMPOSED BY
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY.
PENNSYLVANIA, ENTERED ON JUNE 8, 1993, at
CP-3602-04/1990, DOC. # CP-51-CR-0636011-1990

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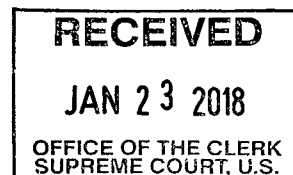


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QUESTIONS PRESENTED FOR REVIEW

1. Whether the trial court's judgment against Petitioner is void for lack of subject matter jurisdiction over the separate and independent offense of Complicity under 18 Pa.C.S.A. § 306?
2. Whether the state court decided an important question of federal law that should be, settled by this Court?
3. Whether the state court has decided an important federal question in a way that conflicts with relevant decision of this Court?

STATEMENT OF JURISDICTION

The Appellate jurisdiction is conferred upon the United States Supreme Court under 28 U.S.C.A. § 1257, which gives the United States Supreme Court jurisdiction over appeals from final judgments or decrees rendered by the highest court of a state in which a decision could be had.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The questions presented implicate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Pennsylvania Rules of Criminal Procedures 561(B), 564, Title 18 Pa.C.S.A. §§ 306, 903, 2502.

STATEMENT OF THE CASE

On June 27, 1990, the Commonwealth filed bills of information specifically charging Petitioner with **conspiring** to commit murder with his codefendant [Principal Perpetrator] Duane Elaim. Subsequently, related offenses were filed, e.g. 18 Pa.C.S.A. §§ 2502, 2503 (first degree murder, voluntary manslaughter); 903 (criminal conspiracy); 907A, 907B (possession of an instrument of crime, possession of a weapon); and 6106-6107 (carrying a firearm in a public street or place in Philadelphia, carrying a firearm without a license).

On November 6, 1991, following a bench trial, Petitioner and Codefendant Eliam were **'acquitted of Criminal Conspiracy'** yet judgment for first degree murder based on a separate and independent offense in Complicity under § 306, was entered against them. However, as previously noted, Petitioner was **'NOT'** charged with Complicity under § 306.

On December 4, 2015, Petitioner filed a Petition for Writ of Habeas Corpus with the Court of Common Pleas of Philadelphia County, which denied Petitioner's Petition as untimely under the PCRA on May 18, 2016. On July 13, 2017, the Superior Court of Pennsylvania affirmed the lower court's decision. On January 9, 2018, the Supreme Court of Pennsylvania denied Petitioner Allowance of Appeal.

ARGUMENT

1. THE TRIAL COURT'S JUDGMENT AGAINST PETITIONER IS VOID FOR LACK OF SUBJECT MATTER JURISDICTION THE OFFENSE OF COMPLICITY UNDER 18 Pa.C.S.A. § 306.

Where a court lacks jurisdiction in a case, any judgment regarding the case is void. The effect of a void judgment is that it must be treated as having never existed. A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. ..All proceeding founded on the void judgment are themselves regarded as invalid and ineffective for any purpose. In short, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It accordingly leaves the parties litigant in the same position they were in before the trial. Lambert v. Blackwell, 175 F.Supp. 2d 776 (2001)

In the present case Petitioner was charged and tried for conspiracy to commit murder with his codefendant Eliam [principal perpetrator], and possession of an instrument of crime. The Commonwealth alleged a 'Criminal Conspiracy' under 18 Pa.C.S.A. § 903, but could not sustain the burden of proof. Consequently, Petitioner and his Codefendant were acquitted of Conspiracy.

Notwithstanding the Commonwealth's failure to sustain the burden of proof for Conspiracy, the trial court assumed the responsibility of an advocate for the Commonwealth, and entered judgment based on an offense never charged nor tried in accordance with due process of law, i.e. Complicity under 18 Pa.C.S.A. § 306. In accordance with Pennsylvania Rules of Criminal Procedure, "Upon the filing of an information, any charge not listed in the information 'shall' be deemed withdrawn by the attorney for the Commonwealth." Rule 561(B).

The sixth amendment guarantees a criminal defendant a fundamental right "to be informed of the nature and cause of the accusation." *Givens v. Housewright*, 786 F.2d 1378, 1380 (9th Cir. 1986). By including the elements of the offense, an indictment [information] informs the defendant of the charge against him. *Hamling v. United States*, 418 U.S. 87, 41 L.Ed.2d. 590, 94 S.Ct 2887 (1984); see *Givens*, 786 F.2d at 1380. The trial court's colloquy gave clear, concise and specific notice of the charges against Petitioner.

Therefore, to determine whether Petitioner received fair notice of the charges against which judgment was entered, this Court is respectfully requested to look at the trial court's colloquy. In this case, Petitioner was specifically charged with violating 18 Pa.C.S.A. §§ 903, 2502, 2503, 2504, 907A, 907B, 6106. Informations and thereafter a complete trial court colloquy that fails to charge Petitioner with Complicity [accomplice liability] under § 306, should

not be viewed as fair notice that he must also be prepared to meet a murder charge that is based on Complicity [a theory of accomplice liability.] Additionally, by virtue of the Petitioner being acquitted of Criminal Conspiracy, the intent necessary to sustain a judgment for first degree murder has necessarily been litigated in his favor.

The Due Process Clause of the Fourteenth Amendment requires the state to prove **beyond a reasonable doubt** "every fact necessary to constitute the crime which [the defendant] is charged." In re Winship, 397 U.S. 358, 364, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970). In determining which facts must be proven to establish a given offense, the Supreme Court generally looks at the state legislature's statutory definition of the offense. To that end, as noted, Petitioner was charged with Conspiracy to commit murder with his codefendant [the principal perpetrator]. Murder as charged in this case is First Degree Murder which is defined as follows: A criminal homicide constitutes murder in the first degree when it is committed by an **"intentional"** killing. Intent is unequivocally an essential element of First Degree Murder. Again, the Due Process Clause requires the government to prove all **'elements'** of the charged offense beyond a reasonable doubt. In re Winship, 397 U.S. at 364.

All theories that are recognized under the law to hold one responsible for the criminal acts of another require

the existence of a shared criminal intent. Intent is the sine qua non of a conspiracy. A lesser standard cannot be interposed in its stead. Thus, by virtue of Petitioner being acquitted of the criminal conspiracy charge, the issue of intent has necessarily been litigated in his favor. Absent criminal intent, sustaining a judgment for first degree murder would be repugnant to the Due Process Clause.

Pennsylvania State Courts have ignored the very principles of Due Process by deciding an important federal question in a way that clearly conflict with relevant decisions of this Court. Contrarily, Pennsylvania Court(s) have previously decided the state rule of law in favor of Petitioner. The Superior Court of Pennsylvania on October 19, 1979, issued its decision in Commonwealth v. Frey, 271 Pa.Super. 168, 412 A.2d 629. In that case, the Court held that, "Defendant's conviction could not be sustained based on the theory that he was an accomplice, when he was not charged with complicity, and thus had no notice."

Petitioner hereby challenges the subject matter jurisdiction of the trial court over the separate and independent offense of Complicity under 18 Pa.C.S.A. § 306. Such defect that in addition to never being forfeited, must be corrected whenever the issue surfaces. Louisville & Louisville R.R. Co. v. Mottley, 211 U.S. 149 (1908).

2. THE STATE COURT DECIDED AN IMPORTANT QUESTION
OF FEDERAL LAW THAT SHOULD BE, SETTLED BY THIS COURT.

In accordance with Pennsylvania Rule of Criminal Procedure, "The court may allow an information to be amended when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, **provided the information as charged does not charge an additional or different offense.**" Rule 564.

With regards to federal standards as to whether a defendant has received fair notice of the charges against him in accordance with due process of law, a court must begin with an analysis of the content of information presented against the accused. See *Cole v. Arkansas*, 333 U.S. 196, 198, 68 S.Ct. 514, 92 L.Ed. 644 (1948). "[A]n information [must] state the elements of an offense charged with sufficient clarity to apprise a defendant of what he must be prepared to defend against." *Russell v. United States*, 369 U.S. 749, 763-64, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962); see also *Hamling v. United States*, 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974)(concluding that a charge or Bill of Information satisfies due process when it contains the elements of the crime, permits the accused to plead and prepare an adequate defense, and allows the disposition to be used as bar in a subsequent prosecution). An explicit citation to the precise statute at issue is best, but a "brief factual recitation in the information" can also suffice.

See Cole, 333 U.S. at 198. The state court standards are in compliance with clearly established Federal law, as determined by the Supreme Court of the United States.

On March 12, 1996, the trial court acknowledged the fact that the judgment against Petitioner was indeed based on the separate, independent and belated offense Complicity [accomplice liability] under § 306. A dialogue between the trial court during a post trial proceeding produced the following exchange:

THE COURT: I found you not guilty of conspiracy.

PETITIONER: What I am saying, ma'am, is that if anybody we never had a chance to defend against any accomplice liability. So I don't understand how it's possible for the Court to have found me guilty of that. That information was never disclosed to my attorneys or myself.

THE COURT: No, no, no, no, no. It was always the case was not that you pulled the trigger, but you told somebody else to pull the trigger. That makes you an accomplice.

PETITIONER: Correct.

THE COURT: **So they didn't have to write it out.**

PETITIONER: You're saying that we did not have to be informed that the Commonwealth was proceeding--

THE COURT: Of course not; your lawyer knew. **[Presumption]**

PETITIONER: Under a theory of accomplice liability?

THE COURT: I'm telling you that where you are not charge with the direct commission of a crime, but with involvement with someone else in the commission of a crime, that is automatically an accomplice liability.

PETITIONER: Don't I have to be charged with it?

THE COURT: **No; it's not a separate charge.**

See N.T. 03/12/1996, Pgs. 10-12.

Contrary to the trial court's misapplication of law, Conspiracy is an Inchoate Offense under the crimes code at 18 Pa.C.S.A. § 903. While Complicity is a Culpability Offense under the crimes code at 18 Pa.C.S.A. § 306. If the State Legislature intended for the Culpability Offense of Complicity

under § 306, to be utilized as a catch-all for the failure to sustain the burden of proof for Conspiracy under § 903, the plain language of the statute would so indicate.

The state standards applied to the 'Culpability Offense' of Complicity and the 'Inchoate Offense' of Conspiracy are distinctly different. To prove Complicity, the Commonwealth must establish the performance of some act, either to encourage or assist in the commission of a crime. Conspiracy on the other hand requires the establishment of an "agreement" between two (2) or more person(s). Given the difference between Complicity and Conspiracy, the mere fact that Petitioner received notice that the Commonwealth would pursue Conspiracy, cannot be viewed as notice that the Commonwealth would rely on Complicity during trial.

The State Court's have long determined that [Complicity] 'accomplice liability' and conspiracy are two separate and distinct crimes. See, Commonwealth v. Petrie, 277 Pa.Super. 239 (1980). State Courts however continue to ignore the very principles of Due Process by sustaining a judgment based on an offense never charged nor tried in accordance with due process of law.

In the interest of justice, the Commonwealth must be precluded from continuing the practice of utilizing the elements of Complicity under § 306, to initiate and sustain judgments against accused for Conspiracy under § 903.

Complicity [accomplice liability] does 'not' necessitate an agreement. Conspiracy on the other hand, is solely predicated on an agreement between parties. The State Legislature has defined Complicity and Conspiracy as follows:

§ 306. Complicity.

Accomplice defined.-A person is an accomplice of another person in the commission of an offense if:

(1) with the **intent** of promoting or facilitating the commission of the offense, he:

(i) solicits such other person to commit it; or

(ii) aids or agrees or attempts to aid such other person in planning or committing it; or

(2) his conduct is expressly declared by law to establish his complicity.

§ 903. Conspiracy:

Definition of conspiracy.-A person is guilty of conspiracy with another person or persons to commit a crime if with the **intent** of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

Petitioner hereby request that this Court certify that the 'Culpability Offense' of Complicity and the 'Inchoate Offense' of Conspiracy are two separate and distinct, indictable offenses.

3. THE STATE COURT HAD DECIDED AN IMPORTANT FEDERAL QUESTION
IN A WAY THAT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT.

Under the Fifth Amendment's provision that no person shall be held to answer for a capital crime unless on the indictment of a grand jury [information], it has been the rule that after an indictment [information] has been returned its charges may **not be broadened** except by the grand jury itself. *Stirone v. United States*, 361 U.S. 212, 4 L.Ed.2d 252, 80 S.Ct. 270 (1960); *Ex Parte Bain*, 121 U.S. 1, 30 L.Ed. 849, 7 S.Ct. 781 (1887). In 1887, the Supreme Court in *Bain*, *supra*, 121 U.S. at 9-10, held that a defendant could only be tried upon the indictment as found by the grand jury and the language in the charging part could not be changed without rendering the indictment [information] invalid. In *Stirone*, *supra*, 361 U.S. at 217, the Supreme Court stated that *Bain* "stands for the rule that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him."

Stirone v. United States, *supra*, 361 U.S. 212, involved a "constructive" amendment. The defendant was found guilty, but the Supreme Court reversed the conviction, stating that the defendant's right to be tried only on charges presented in an indictment returned by a grand jury had been destroyed even though the indictment had not been formally changed. *Stirone v. United States*, *supra*, 361 U.S. at 217.

Under Stirone, the question to be asked in identifying a constructive amendment is whether there has been a modification at trial in the **elements** of the crime charged. In applying this test to the present case, the trial court clearly modified the elements of Conspiracy under § 903, to add the elements of Complicity under § 306, thereby 'constructively' amending the information at trial. As previously noted, under Pennsylvania Law, "Defendant's conviction could not be sustained based on the theory that he was an accomplice, when he was not charged with complicity, and thus had no notice." Commonwealth v. Frey, 271 Pa.Super. 168 (1979). Jurist of reason would clearly find sustaining a judgment against an accused for first degree murder after having acquitted said accused of the sole liability nexus between himself and the principal perpetrator, i.e. Criminal Conspiracy under § 903, debatable. Having never been charged nor tried for any other form of vicarious liability, the very principles of substantive due process have unequivocally been violated.

By statute, Pennsylvania law allows certain amendments. 42 Pa.C.S.A. § 564 provides:

The court may allow an information to be amended when there is a defect in form, the description of the offenses, the description of any person or any property, or the date charged, **provided the information as amended does not charge an additional or different offense.**

Additionally, Pennsylvania law provides, "If, however, the amended provision alleges a different set of events, **or the elements** or defenses to the amended crime are materially different from the elements or defenses to the crime originally charged, such that the defendant would be prejudiced by the charge, then the amendment is not permitted. Commonwealth v. Sinclair, 2006 Pa.Super. 83, 897 A.2d 1218, 1221 (Pa.Super. 2006).

CONCLUSION

Wherefore, any and all of the foregoing reasons, it is respectfully requested that this Court, prior to reaching a decision, make an independent review of the record in this matter and upon the same, find that a void judgment clearly and unequivocally falls outside of the ambit of potential claims cognizable under the PCRA; grant this Petitioner's Petition for Writ of Certiorari based on the facts that by way of being acquitted of Criminal Conspiracy the issue of intent necessary to sustain a judgment for first degree murder being litigated in his favor, and; the trial court 's judgment being void for lack of subject matter jurisdiction over an offense neither charged nor tried in accordance with due process of law, i.e. the 'Culpability Offense' of Complicity under 18 Pa.C.S.A. § 306 of the Pennsylvania Crimes Code.