

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SUPREME RAHEEM ACKBAR — PETITIONER
(Your Name)

VS.

WARDEN MCFADDEN — RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
PETITION FOR WRIT OF CERTIORARI

SUPREME RAHEEM ACKBAR

(Your Name)

PERRY C.I., 436 OAKLAWN RD.

(Address)

PELZER, SC 29669

(City, state, zip code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did Petitioner Present the required showing of conscious acts of wrong doings to prove fraud on the Court?
2. Did the Clerk, Patricia S. Connor exceed her authority via unpublish opinion?

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Brown v. Illinois, 95 S.Ct. 2254

Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed 2d (1972)

Miller v. Pate, 87 S.Ct. 785

Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 34, 79 L.Ed 791 (1935)

Napue v. Illinois, 360 U.S. 264 79 S.Ct. 1173

Schlup v. Delo, 115 S.Ct. 851 (1995)

Strickland v. Washington, 104 S.Ct. at 2067-2069

U.S. v. Bailes, 10 F.Supp.2d 607 (S.D.W. Va. 1998)

U.S. v. Brown, 880 F.2d 1012 (4th Cir. 1989)

United States v. Diando, 113 S.Ct. 1770

STATUTES AND RULES

Fed. R. Crim. P. Rule 52 (b)

Fed. R. Crim. P. Rule 60 (b) (3)

Section 1341 of Title 18

Fed. R. Crim. P. Rule 404 (b)

Fed. R. Crim. P. Rule 406

OTHER

People v. Beach, 49 Colo. 516, 113 P. 513, 515, 37 W.R.A (N.S.) 873

No. 17-5507 Ackbar v. Lieutenant McPherson

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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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix F to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at Ackbar V Warden McFadden 4:17-cv-00334-RMG-JER; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1-8-18.

[] No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Feb. 24, 2018, and a copy of the order denying rehearing appears at Appendix F.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1341 of Title 18, United States Code, provides as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or obtain money or property by means of or fraudulent pretense, representation, or promises, or to sell, dispose of, loan, exchange, alter, give away distribute, supply or furnish or procure for unlawful use any counterfeit or spurious article for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by post service, or takes, or receives therefrom, any such matter or thing, or knowingly cause to be delivered by according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

On Sept. 15, 2009 Respondent, after using illegal methods, appeared before the Magistrate Court and maliciously falsely testified that Petitioner robbed "The Money Store" in Duncan, SC of Spartanburg County at gun point. See Appendix A. (Note the underline and circle material.)

On Sept. 20, 2009 Ricky Kelly Jr. was apparently stab to death with a unknown sharp object. During the course of the investigation the Respondent is clearly seen again using illegal methods such as coercion, threats and trickery in instigating and maintaining Petitioner's false prosecution. See Appendix B. (Note the underline material.)

On Sept. 21, 2009 after willingly and freely appearing in the Spartanburg County Sheriff's office, Petitioner was illegally seized and booked into the Spartanburg County Jail with a apparent defective arm robbery warrant. (Note Paragraph 14 of the Spartanburg Investigation Report 00125 of Appendix B.)

On Sept. 24, 2009 Respondent again maliciously falsely testified before the Magistrate Court that Petitioner killed the decedent Ricky Kelly Jr. with a "LARGE FIXED BLADE HUNTING KNIFE". See Appendix C.

After being bombarded with actual and substantial prejudice by the state courts Petitioner filed for writ of habeas corpus. See Appendix D. (Note: Respondent did not dispute any of Petitioner's claims regarding Warrant #116206 and was permitted to make factual contentions without evidentiary support with impunity regarding Warrant #M-089645. See Tr.P. 268, 12-21 of Appendix D. See U.S. v. Bailes, 10 F. Supp. 2d 607 (S.D.W. Va. 1998) (a federal district court may dismiss charges at pretrial stage where operative facts are undisputed and government fails to object to district court's consideration of those undisputed facts in making determination regarding dismissible case; such pretrial dismissal is essentially determination that, as matter of law, government is incapable of proving its case beyond reasonable doubt.)

During the petition for writ of habeas corpus the court redundantly discharged

its duty with vigorous partiality towards Petitioner to which caused Petitioner to seek appellate review. See Appendix E (Note: Petitioner is unable to provide certain submitted documents due to the issue(s) of the grievance.)

On Jan. 8, 2018 the clerk filed Notice of Judgment via unpublished opinion claiming Petitioner's appeal was submitted before circuit judges Traxler, Shedd, and Agee on December 19, 2017. The Signatures of the aforesaid Judges was not affixed to the Notice of Judgment. (Note Respondent did not file a Informal Response Brief.) Petitioner timely submitted a Petition for rehearing en banc pointing out Material factual legal matter that had been overlooked as requested.

On Jan. 23, 2018 a stay of Mandate was filed. On 2-26-18 the Clerk Patricia S. Connor acted for the court with a order denying Petitioner rehearing en banc without a Judge's name or signature thereto. See Appendix F. This Petition for certiorari follows.

SUMMARY ARGUMENT

The Supreme Court has found due process violations in several cases where prosecutors knowingly have introduced and argued false testimony. See Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 34, 79 L.Ed. 791 (1935) (Prosecution based on perjured testimony); Miller v. Pate, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed. 2d 690 (1967) (Prosecutor proffered men's shorts allegedly stained with murder victim's blood when stains were actually paint); Napue v. Illinois, 360 U.S. 264 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959) (Prosecution witness falsely testified that he had not received consideration for his testimony); Griglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972) (Same).

By allowing Respondent to testify inconsistent, the Respondent violated the duty to correct false evidence when it is offered. Napue v. Illinois 79 S.Ct. 1173, See Tr. p. 268, 12-21 of Appendix D. Furthermore by arguing to the Jury that the false evidence was clear in showing Petitioner as the culpable party, the Respondent violated the duty not to argue false or inadmissible evidence to the Jury. Miller v. Pate, 87 S.Ct. 785, U.S. v. Brown, 880 F.2d 1012 (9th Cir. 1989). See United State v. Orlando, Brown v. Illinois, Schlup v. Delo, Strickland v. Washington.

Finally, the record supports the undisputed fact "Petitioner was maliciously arrested for arm robbery with a 'bare bone' warrant and taken to trial and found guilty of murder with incompetent evidence without ever being served a warrant for murder" nevertheless the courts below has failed to adhere to the Supreme law of our land.

REASON FOR GRANTING THE PETITION

In People v. Beach, 49 Colo. 516, 113 P. 513, 515, 37 L.R.A. (N.S.) 873, this is found: "If the arrest of the prisoner was not a lawful one, if made under a void warrant, or without warrant in a case where a warrant is required, or if not made in such circumstances as to justify the arrest without warrant, the officer was not acting in his official capacity, either by virtue of, or under color of, office." (Italics added.)

The Clerk, Patricia S. Connor was aware Petitioner was presenting evidence of being arrested under a void arm robbery warrant and never being served the void Murder warrant nevertheless the Clerk, Patricia S. Connor exceeded her authority and engaged in conduct which is aptly described as "outright usurpation" in issuing judgments and orders and in signing her name for the Fourth Circuit Court of Appeals.

The Clerk, Patricia S. Connor does have a routine practice of committing the same wrongs or acts described herein against Petitioner. See No. 17-5507 Ackbar v. Lieutenant McPherson; Fed. R. Crim. P. Rule 404 (b) and 406.

Petitioner argues with zeal and ability that the surety on the clerk's bond is liable because the clerk's actions were done *colore officii*. Such actions by the Clerk, Patricia S. Connor was never at any time within the purview of her duties and clearly it could not have been contemplated or contracted against by the surety on the bond of the Clerk that she would assume to usurp such authority.

The Facts are clear and undisputed in Petitioner's case and the clerk's unpublished opinion is not binding and not law and therefore is reason for granting this petition.

The unpublished opinion of the Clerk, Patricia S. Connor for the Fourth Circuit Court of Appeal has no merit in this case and this Court should vacate Petitioner's conviction. This Court holds that a conviction obtained with false evidence can not stand.

For the reasons set forth above, the Petitioner "Ackbar" respectfully requests this Honorable Court and Clerk to abide by the Supreme Court's law and vacate this false conviction and the Clerk, Patricia S. Connor's improper unpublished opinions which includes those made in No. 17-5507

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted
Supreme L. Ackbar

Date: April 5, 2018