

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October 2017 Term

JEFFREY RANDLE — PETITIONER
(Your Name)

vs.

STATE OF mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Mississippi Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JEFFREY RANDLE # 81125
(Your Name)

S. M. C. I. Unit: D-2
(Address)

P. O. Box 1419
(City, State, Zip Code)

LOAKESVILLE, mississippi 39451
(Phone Number)

(PROSE Petitioner)

QUESTION(S) PRESENTED

I

WHETHER THE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT UNDER THE UNITED STATES CONSTITUTION TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM

II

WHETHER THE MISSISSIPPI SUPREME COURT HAS STRICTLY OR REGULARLY APPLIED A STATE PROCEDURAL BAR TO CLAIMS RAISING A DEFECTIVE INDICTMENT

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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PLEASE NOTE THAT I AM NOT IN POSSESSION OF ANY OTHER STATE OR FEDERAL OPINIONS. I HAVE ATTACHED ALL THE LOWER COURT'S OPINIONS IN MY POSSESSION. I SHOULD NOTE THAT MY CRIMINAL CASE WAS NEVER BEEN BEFORE THE MISSISSIPPI COURT OF APPEALS.

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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 "E," "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☒ is unpublished.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 _____; 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☐ is unpublished.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 "C," "D" 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☒ is unpublished.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 OCTOBER 4, 2005 AND OCTOBER 18, 2010

☒ 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: _____, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was FILED 2-8-18 AND
A copy of that decision appears at Appendix "C" AND "D" 8-13-14

☐ A timely petition for rehearing was thereafter denied on the following date:
NIA, and a copy of the order denying rehearing
appears at Appendix _____. PETITION FOR REHEARING NOT ALLOWED
UNDER MISSISSIPPI RULES OF APPELLATE
PROCEDURE

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NIA (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

Amendment VI, United States Constitution states that in all criminal prosecutions the accused shall enjoy the right... to be informed of the nature and cause of the accusation.

Article 3, Section 26 of the Mississippi Constitution states that in all criminal prosecutions the accused shall have a right... to demand the nature and cause of the accusation.

STATEMENT OF THE CASE

THE Petitioner, JEFFREY RANDLE, (HEREIN REFERRED TO AS RANDLE) WAS INDICTED BY A CLAY COUNTY, MISSISSIPPI GRAND JURY ON OR ABOUT April 14, 1997. (SEE INDICTMENT ATTACHED AS EXHIBIT - "A").

THE ATTACHED INDICTMENT ALLEGED THAT ON THE 4TH DAY OF JANUARY 1997, RANDLE DID KILL AND MURDER WILLIE MAE SEWELL, WHILE ENGAGED IN THE CRIME OF ROBBERY, IN VIOLATION OF SECTION 97-3-19, MISSISSIPPI CODE OF 1972.

THE ATTACHED INDICTMENT CITES

SECTION 97-3-19, THE FELONY MURDER
STATUTE AND NOT SECTION 97-3-19(2)(E)
THE CAPITAL MURDER STATUTE.

THE ATTACHED INDICTMENT DOES NOT
DEFINE THE ROBBERY RANBLE ALLEGEDLY
COMMITTED.

THE LANGUAGE OF THE INDICTMENT
DOES NOT ALLEGE CAPITAL MURDER UNDER
SECTION 97-3-19 (2)(E).

THE INDICTMENT DOES NOT ALLEGE THE
ESSENTIAL ELEMENTS OF THE CAPITAL
MURDER. THAT IS, THE MURDER
OCCURRED during THE COMMISSION OF
ANOTHER CRIME.

ON SEPTEMBER 27, 1999 RANBLE
WAS TRIED FOR CAPITAL MURDER
DURING THE COMMISSION OF ROBBERY.

THE STATE SOUGHT THE DEATH PENALTY.

IT WAS NOT UNTIL THE END OF THE TRIAL, WHEN RANDLE WAS INFORMED OF THE SPECIFIC ROBBERY HE ALLEGEDLY COMMITTED.

THE STATE SUBMITTED A JURY INSTRUCTION THAT DEFINED SIMPLE ROBBERY UNDER SECTION 97-3-73, MISSISSIPPI CODE OF 1972¹ (SEE JURY INSTRUCTION, ATTACHED AS EXHIBIT-"B")

THE JURY FOUND RANDLE GUILTY OF CAPITAL MURDER DURING THE COMMISSION OF SIMPLE ROBBERY. RANDLE WAS SENTENCED TO LIFE WITHOUT PAROLE.

¹ RANDLE'S INDICTMENT DOES NOT CITE ANY ROBBERY STATUTE.

ON August 15, 2000 THE MISSISSIPPI SUPREME COURT AFFIRMED RANDLE'S CONVICTION AND SENTENCE ON DIRECT APPEAL. SEE: RANDLE V STATE, 827 S022 705 (MISS. 2000).

ON November 1, 2017 RANDLE FILED A SUCCESSIVE POST CONVICTION PETITION IN THE MISSISSIPPI SUPREME COURT. RANDLE RAISED THE FOLLOWING GROUNDS: (1) WHETHER RANDLE WAS DENIED HIS FUNDAMENTAL CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATIONS AGAINST HIM (2) WHETHER AN INDICTMENT WHICH FAILS TO ALLEGE THE ESSENTIAL ELEMENTS OF CAPITAL MURDER DURING THE COMMISSION OF A ROBBERY VIOLATES

BOTH THE FEDERAL AND STATE

CONSTITUTIONS (3) WHETHER THE FAILURE OF AN INDICTMENT TO ALLEGE THE ESSENTIAL ELEMENTS OF CAPITAL MURDER DURING THE COMMISSION OF ROBBERY RESULTS IN THE CIRCUIT COURT LACKING SUBJECT MATTER JURISDICTION?

THE STATE SUPREME COURT DENIED THE SUCCESSIVE POST CONVICTION PETITION ON FEBRUARY 8 2018 (SEE EXHIBIT - "C")

THE COURT DID NOTE THAT A PETITION FOR DNA WAS GRANTED BY THE COURT ON AUGUST 13, 2014. DNA TESTING WAS CONDUCTED BUT THE TEST RESULTS WERE

2 NONE OF THE THREE (3) CLAIMS RAISED IN RANDELL'S SUCCESSIVE POST CONVICTION PETITION HAS EVER BEEN RAISED ON DIRECT APPEAL, IN STATE POST CONVICTION PETITIONS OR IN A FEDERAL WRIT OF HABEAS CORPUS.

INCONCLUSIVE.

THE STATE SUPREME COURT DID NOT RULE ON ANY OF THE MERITS RAISED IN RANDLE'S SUCCESSIVE POST CONVICTION PETITION. THE COURT DENIED RANDLE'S POST-CONVICTION PETITION ON PROCEDURAL GROUNDS.

RANDLE WILL ESTABLISH THAT A DEFECTIVE INDICTMENT VIOLATES BOTH THE MISSISSIPPI CONSTITUTION AND THE UNITED STATES CONSTITUTION. THAT RANDLE WAS CONVICTED OF A CRIME THAT WAS NOT SET FORTH IN THE INDICTMENT. FINALLY, THE MISSISSIPPI SUPREME COURT HAS NOT STRICTLY OR REGULARLY APPLIED A STATE PROCEDURAL BAR TO CLAIMS RAISING A DEFECTIVE INDICTMENT

REASONS FOR GRANTING THE PETITION

I

WHETHER RANDLE WAS DENIED HIS SIXTH AMENDMENT RIGHT UNDER THE UNITED STATES CONSTITUTION TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM

State Law Constitutional Violation

ARTICLE 3, SECTION 26 OF THE MISSISSIPPI CONSTITUTION STATES THAT "IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL HAVE A RIGHT... TO DEMAND THE NATURE AND CAUSE OF THE ACCUSATION."

ARTICLE 3, SECTION 27 OF THE MISSISSIPPI CONSTITUTION STATES "NO PERSON SHALL FOR ANY INDICIBLE

OFFENSE BE PROSECUTED AGAINST
CRIMINALLY BY INFORMATION..."

Thus, a defendant is entitled
to "NOTICE AND REASONABLE
DESCRIPTION OF THE CHARGES AGAINST
HIM SO THAT HE MAY PREPARE HIS
DEFENSE." SEE: BATISTE V STATE,
121 SO3D 808, 836 (P42) (MISS. 2013)
(QUOTING GOFF V STATE, 14 SO3D 625,
665 (P175) (MISS. 2009)

THE ATTACHED INDICTMENT ALLEGED
RANDLE COMMITTED ROBBERY BUT DONT
DEFINE THE ROBBERY RANDLE
ALLEGEDLY COMMITTED.

AT TRIAL, THE STATE SUBMITTED A
JURY INSTRUCTION THAT CLAIMED RANDLE
COMMITTED SIMPLE ROBBERY IN

VIOLATION OF SECTION 97-3-73. (SEE
JURY INSTRUCTION, EXHIBIT - "B")

RANDLE'S INDICTMENT ALSO
ALLEGED HE KILLED THE VICTIM
WHILE ENGAGED IN THE COMMISSION OF
A ROBBERY IN VIOLATION OF SECTION
97-3-19, THE FELONY MURDER
STATUTE.

RANDLE WAS CONVICTED BY A JURY
FOR THE CRIME OF CAPITAL MURDER
DURING THE COMMISSION OF SIMPLE
ROBBERY IN VIOLATION OF 97-3-73.

NOWHERE IN THE INDICTMENT IS
RANDLE PUT ON NOTICE THAT THE STATE
IS CHARGING HIM WITH SIMPLE
ROBBERY IN VIOLATION OF SECTION
97-3-73.

NO WHERE IN THE INDICTMENT IS RANDLE PUT ON NOTICE THAT THE STATE WAS CHARGING RANDLE WITH CAPITAL MURDER DURING THE COMMISSION OF SIMPLE ROBBERY AS DEFINED BY SECTION 97-3-73 AND CONTRARY TO AND VIOLATION OF SECTION 97-3-19(2)(E), THE CAPITAL MURDER STATUTE.

RANDLE'S INDICTMENT ALSO FAILED TO CHARGE THE ESSENTIAL ELEMENTS OF CAPITAL MURDER DURING THE COMMISSION OF SIMPLE ROBBERY AS DEFINED BY SECTION 97-3-73 MISSISSIPPI CODE OF 1972, AS AMENDED, AND CONTRARY TO AND VIOLATION OF SECTION 97-3-19(2)(E),

MISSISSIPPI CODE OF 1972, AS AMENDED.

UNDER MISSISSIPPI LAW, THE
INDICTMENT MUST CONTAIN (1) THE
ESSENTIAL ELEMENTS OF THE OFFENSE
CHARGED (2) SUFFICIENT FACTS TO
FAIRLY INFORM THE DEFENDANT OF
THE CHARGES AGAINST HIM WHICH HE
MUST DEFEND AND (3) SUFFICIENT
FACTS TO ENABLE HIM TO PLEAD
DOUBLE JEOPARDY IN THE EVENT OF
A FUTURE PROSECUTION FOR THE
SAME OFFENSE. SEE: GILMER V
STATE, 955 SO2D 829, 836-37(P24)
(MISS. 2007) (CITING HAM LING V
UNITED STATES, 418 U.S. 87, 117, 94
S.Ct. 2887, 41 L.Ed. 2d 590 (1974)
" EACH AND EVERY MATERIAL FACT

AND ESSENTIAL INGREDIENT OF THE
OFFENSE MUST BE WITH PRECISION
AND CERTAINTY SET FORTH. SEE:
BURCH FIELD V STATE, 277 SO2D 623,
625 (MISS. 1973).

REPEATEDLY, THE MISSISSIPPI
SUPREME COURT HAS HELD THAT AN
INDICTMENT BASED UPON STATUTORY
OFFENSE MUST CHARGE ALL OF THE
ESSENTIAL ELEMENTS OF THE STATUTORY
CRIME AND IS VOID FOR FAILURE TO
DO SO. SEE: THOMAS V STATE,
126 SO3D 877, 879 (PT) (MISS. 2013)

AN INDICTMENT THAT FAILS TO
ALLEGES ALL ESSENTIAL ELEMENTS OF
A CRIME RUNS AFOUL OF BOTH THE
MISSISSIPPI CONSTITUTION AND THE

UNITED STATES CONSTITUTION. SEE: THOMAS,
126 SO3d AT 879 (PT)

THE MISSISSIPPI SUPREME COURT HAS
CLARIFIED THAT IN CAPITAL MURDER
CASES, UNLESS THE UNDERLYING
FELONY IS BURGLARY, "THE
UNDERLYING FELONY THAT ELEVATES
THE CRIME TO CAPITAL MURDER MUST
BE IDENTIFIED IN THE INDICTMENT,
ALONG WITH THE SECTION AND
SUBSECTION OF THE STATUTE WHICH
THE DEFENDANT IS BEING CHARGED." SEE
SEE: BATISTE V STATE, 121 SO3d 808,
836 (P43) (MISS. 2013)

RANDLE'S INDICTMENT CHARGES ROBBERY
BUT DOES NOT SPECIFY WHAT TYPE OF
ROBBERY RANDLE IS ACCUSED OF

committing. THE ROBBERY CHARGE LISTED IN THE INDICTMENT DOES NOT CITE ANY ROBBERY STATUTE OR DESCRIBE ANY ESSENTIAL ELEMENTS OF THE ROBBERY.

ALSO, THE ROBBERY CITED IN THE INDICTMENT IS NOT USED TO ELEVATE RANDLE'S OFFENSE TO CAPITAL MURDER. THE INDICTMENT ONLY CITE SECTION 97-3-19, THE MURDER STATUTE.

RANDLE'S INDICTMENT DOES NOT CITE SECTION 97-3-19(2)(E), THE STATUTE USED TO ESTABLISH CAPITAL MURDER.

THE MISSISSIPPI SUPREME COURT DECISION IN BATISTE, SUPRA, DOES NOT REQUIRE A DEFENDANT INDICTED

FOR CAPITAL MURDER TO INCLUDE ALL THE ELEMENTS OF THE UNDERLYING CRIME, BUT IT DOES REQUIRE THE UNDERLYING CHARGE TO BE IDENTIFIED FOLLOWED BY THE CODE SECTION THAT DEFINES THE OFFENSE.

ALSO, THE MISSISSIPPI SUPREME COURT DECISION IN BATISTE, SUPRA, REQUIRE THE INDICTMENT TO CITE THE CODE SUBSECTION THAT ELEVATES THE CHARGE TO CAPITAL MURDER. THAT SUBSECTION WOULD BE SECTION 97-3-19(2)(E).

RANDLE'S INDICTMENT DOES NOT CONTAIN THE MINIMAL REQUIREMENTS MANDATED BY THE MISSISSIPPI SUPREME COURT IN BATISTE, SUPRA.

: AGAIN, RANDLES IN DIC TMENT DOES NOT INCLUDE THE ESSENTIAL ELEMENTS TO ESTABLISH RANDLE IS BEING CHARGED WITH CAPITAL MURDER DURING THE COMMISSION OF ROBBERY, AS DEFINED BY SECTION 97-3-73, AND CONTRARY TO AND VIO LATION OF SECTION 97-3-19(2)(E).

THE RIGHT TO NOTICE OF CRIMINAL CHARGES IS GUARDED BY BOTH THE FEDERAL AND STATE CONSTITUTIONS.

SEE: THOMAS, 126 SO3d AT 879 (PI).

AN IN DIC TMENT WHICH FAILS TO ALLEGE ALL ESSENTIAL ELEMENTS OF A CRIME RUNS AFoul OF BOTH THE UNITED STATES CONSTITUTION AND THE MISSISSIPPI CONSTITUTION AND IS

Void. SEE: THOMAS, 126 S03d At
879 (PT)

Sub ject matter Jur is dic tion

RANDLE WILL ESTABLISH UNDER
MISSISSIPPI LAW, THE TRIAL COURT
LACKED SUB JECT MATTER JURISDICTION.

RANDLE'S IN DIC TMENT DID NOT
DEFINE THE ROBBERY HE ALLEGEDLY
COMMITTED. THE IN DIC TMENT DID
NOT CITE ANY ROBBERY STATUTE.

RANDLE'S IN DIC TMENT DOES NOT CITE
THE SUB SECTION OF THE MURDER
STATUTE THAT ELEVATED HIS CHARGE
FROM MURDER TO CAPITAL MURDER.

BASED ON THE IN DIC TMENT, RANDLE
HAD NO WAY OF KNOWING THE
SPECIFIC CHARGES AGAINST HIM.

THERE ARE THREE (3) SEPERATE ROBBERY
STATUTES IN THE STATE OF MISSISSIPPI.

SEE: SECTIONS 97-3-73, 97-3-77,
AND 97-3-79, MISSISSIPPI CODES OF
1972, AS AMENDED.

ALSO, THE ATTACHED INDICTMENT IS
UNCLEAR WHETHER RANDLE WAS INDICTED
FOR MURDER UNDER SECTION 97-3-19
OR CAPITAL MURDER UNDER SECTION
97-3-19 (2) (E).

THE JURY FOUND RANDLE GUILTY OF
CAPITAL MURDER DURING THE
COMMISSION OF SIMPLE ROBBERY.

IT SHOULD BE NOTED AGAIN THAT
RANDLE WAS NOT INDICTED FOR THE
OFFENSE OF CAPITAL MURDER DURING THE
COMMISSION OF SIMPLE ROBBERY.

THE OFFENSE OF Simple Robbery
IS NOT ALLEGED IN RANDLE'S
INDICTMENT. ALSO, THE INDICTMENT
IS UNCLEAR AS TO WHETHER THE
UNSPECIFIED ROBBERY WAS ELEVATED
TO CHARGE RANDLE WITH CAPITAL
MURDER UNDER SECTION 97-3-19(2)(E).

BECAUSE RANDLE'S INDICTMENT WAS
NOT CHARGING HIM WITH THE ESSENTIAL
ELEMENTS OF CAPITAL MURDER DURING THE
COMMISSION OF SIMPLE ROBBERY, THE
CIRCUIT COURT LACKED SUBJECT MATTER
JURISDICTION OVER THE OFFENSES OF
CAPITAL MURDER AND SIMPLE ROBBERY.
SEE: JEFFERSON V STATE, 556 SO2d
1016, 1021 (MISS. 1989).

IN THIS PARTICULAR CASE, RANDLE'S

INDICTMENT DOES NOT DEFINE ANY OF THE
THESE (3) SEPERATE AND DISTINCT ROBBERY
STATUTES. ALTHOUGH, THE JURY WAS
INSTRUCTED ON SIMPLE ROBBERY UNDER
SECTION 97-3-73. (SEE JURY
INSTRUCTION, EXHIBIT-"B")

ALSO, IF THE ROBBERY CHARGE IN
RANDLE'S INDICTMENT IS NULLIFIED,
THE TRIAL JUDGE LACKED SUBJECT MATTER
JURISDICTION TO TRY, CONVICT AND
SENTENCE RANDLE FOR CAPITAL MURDER
UNDER SECTION 97-3-19 (2)(E).

FEDERAL LAW CONSTITUTIONAL VIOLATION

RANDLE'S FEDERAL CONSTITUTIONAL
VIOLATION PERTAINING TO THE ATTACHED
DEFECTIVE INDICTMENT WILL NOT BE
DRAWN OUT LIKE HIS STATE LAW CONSTITUTIONAL

VIOLATION ON THE SAME ISSUE. THAT IS BECAUSE THE STATE LAW CONSTITUTIONAL VIOLATION MIRROR THE FEDERAL LAW CONSTITUTIONAL VIOLATION.

FEDERAL LAW CONSTITUTIONAL VIOLATION

AMENDMENT VI, OF THE UNITED STATES CONSTITUTION STATES THAT "IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT ... TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION". THE SAME LANGUAGE IS IN THE MISSISSIPPI CONSTITUTION UNDER ARTICLE 3, SECTION 26.

THIS COURT HAS RULED THAT AN INDICTMENT IS SUFFICIENT IF IT, FIRST, CONTAINS THE ELEMENTS OF THE OFFENSE CHARGED AND FAIRLY INFORMS A

DEPENDANT OF THE CHARGE AGAINST WHICH HE MUST DEFEND, AND, SECOND, ENABLES HIM TO PLEAD AN ACQUITTAL OR CONVICTION IN BAR OF FUTURE PROSECUTIONS FOR THE SAME OFFENSE. SEE: Hamling v U.S. 418 U.S. 87, 117, 94 S.Ct. 2887, 2907, 41 L.Ed. 2d 590 (1974).

It is GENERALLY SUFFICIENT THAT AN INDICTMENT SET FORTH THE OFFENSE IN THE WORDS OF THE STATUTE ITSELF, AS LONG AS "THOSE WORDS OF THEMSELVES FULLY, DIRECTLY, AND EXPRESSLY, WITHOUT ANY UNCERTAINTY OR AMBIGUITY, SET FORTH ALL THE ELEMENTS NECESSARY TO CONSTITUTE THE OFFENSE INTENDED TO BE PUNISHED". SEE: Hamling, 418 U.S. AT 117.

"Undoubtedly, the LANGUAGE OF THE Statute may be used in the GENERAL description OF AN OFFENSE, but it must BE ACCOMPANIED WITH SUCH A STATEMENT OF THE FACTS AND CIRCUMSTANCES AS WILL IN FORM THE ACCUSED OF THE SPECIFIC OFFENCE, coming UNDER the general description, WITH WHICH HE IS CHARGED." SEE: Hamling 418 U.S. AT 117-118.

APART FROM PROTECTING THE RIGHTS OF THE ACCUSED, THE CONSTITUTIONAL REQUIREMENTS OF A VALID INDICTMENT FURTHER "INFORMS THE COURT OF THE FACTS ALLEGED, SO THAT IT MAY DECIDE WHETHER THEY ARE SUFFICIENT IN LAW TO

Support A Conviction." See: Russell v United States, 369 U.S. 749, 768 (1962).

RANDLES' indictment don't meet the first requirement of the Hamling test because it don't track the language of section 97-3-19(2)(E), which set forth the elements for capital murder.

Under section 97-3-19(2)(E), the state must establish RANDLE committed a murder during the commission of another felony.

In RANDLES' indictment, the state don't cite section 97-3-19(2)(E) but rely on section 97-3-19, the felony murder statute.

Section 97-3-19, the felony murder statute, don't rely on a

SEPERATE CRIME TO RESULT IN A MURDER CONVICTION. ALL THE STATE HAS TO DO IS PROVE THE ACTUAL MURDER.

ALSO, RANDLE'S INDICTMENT REFERRED TO A ROBBERY BUT DID NOT DEFINE THE ROBBERY. AS PREVIOUSLY ESTABLISHED, MISSISSIPPI HAS THREE (3) ROBBERY STATUTES.

RANDLE'S INDICTMENT DON'T MEET THE SECOND REQUIREMENT OF THE HAMLING TEST. THAT IS, THE INDICTMENT DON'T PUT RANDLE ON FAIR NOTICE OF THE CRIME CHARGED.

RANDLE'S INDICTMENT SPECIFICALLY CITES SECTION 97-3-19, THE MURDER STATUTE, AND NOT SECTION 97-3-19(2)(E), THE CAPITAL MURDER STATUTE.

RANDLE'S INDICTMENT CLEARLY PUT HIM ON NOTICE HE WAS CHARGED WITH MURDER

AND NOT CAPITAL MURDER.

IN CONCLUSION, RANDE WAS CONVICTED OF CAPITAL MURDER DURING THE COMMISSION OF SIMPLE ROBBERY. RANDE'S INDICTMENT ONLY CONTAINED THE ELEMENTS FOR THE CRIME OF MURDER.

RANDE'S INDICTMENT MENTIONED A ROBBERY BUT DID NOT CITE WHICH ROBBERY STATUTE. THEREFORE, RANDE WAS NOT PROVIDED FAIR NOTICE OF THE SPECIFIC ROBBERY STATUTE.

FINALLY, IF A INDICTMENT IS LEGALLY DEFICIENT UNDER HAMLING, THE PROPER RESULT IS DISMISSAL OF THE INDICTMENT. SEE: UNITED STATES V. LAKE HAM, 251 F.3d 1072, 1080 (CA11 Cir. 2001)

II

WHETHER THE MISSISSIPPI SUPREME COURT HAS STRICTLY OR REGULARLY APPLIED A STATE PROCEDURAL BAR TO CLAIMS RAISING A DEFECTIVE INDICTMENT

THIS COURT HAS RULED THAT A PROCEDURAL RULE MUST BE ADEQUATE. THE COURT HAS DEFINED THIS CONCEPT OF ADEQUACY TO INCLUDE A STATE PROCEDURAL GROUND THAT IS STRICTLY OR REGULARLY APPLIED, EVEN WAIVED TO THE VAST MAJORITY OF SIMILAR CLAIMS. SEE: DUGGER V ADAMS, 489 U.S. 401, 410 N⁶, 109 S.Ct. 1211, 1217 N⁶, 103 L.Ed.2d 435 (1989)

IN HATHORN V LOVERN, 457 U.S. 255, 263, 102 S.Ct. 2421, 2426, 72 L.Ed.2d 824 (1982) THE COURT RULED THAT "STATE COURTS MAY NOT AVOID DECIDING FEDERAL ISSUES BY

INVOKING PROCEDURAL RULES THAT DO NOT APPLY EVEN HANDEDLY TO ALL SIMILAR CLAIMS."

RANDLE WILL ESTABLISH THAT THE PROCEDURAL BASES USED BY THE MISSISSIPPI SUPREME COURT TO DENY HIS DEFECTIVE INDICTMENT CLAIM IS NOT REGULARLY OR STRICTLY APPLIED. ALSO, THE FAILURE OF THIS COURT TO REVIEW THIS CLAIM WILL RESULT IN A "FUNDAMENTAL MIS CARRIAGE OF JUSTICE".

MISSISSIPPI POST CONVICTION STATUTE

SECTION 99-39-5(2), MISSISSIPPI CODE OF 1972, AS AMENDED, REQUIRE A POST CONVICTION PETITION TO BE FILED THREE (3) YEARS AFTER ENTRY OF THE JUDGMENT OF CONVICTION.

Certain statutory exceptions apply but are not applicable to Randle.

Section 99-39-27(a), Mississippi Code of 1972, As Amended, allow a second or successive post conviction petition to be filed under certain statutory exceptions that are not applicable to Randle.

Randle will establish Mississippi Courts do not regularly apply either the three (3) year statute of limitation under Section 99-39-5(2) and the second or successive writ bar under Section 99-39-27(a)

Fundamental Rights

The Mississippi Supreme Court has ruled that none of the procedural bars

outlined in the Mississippi Post Conviction Statute apply to claims raising a fundamental constitutional right.

In Rawland v State, 42 So3d 503, 506-07 (Miss. 2010), the Mississippi Supreme Court stated that "we take this opportunity to hold, unequivocally, that errors affecting fundamental constitutional rights are excepted from the procedural bars of the post conviction statute," including the state's time bar.

In Chapman v State, 167 So3d 1170, 1174 (P13) (Miss. 2015), the State Supreme Court reinforced Rawland by adding: "All Courts have no discretion in this regard."

THEREFORE, UNDER RAW LANE AND CHAPMAN SUPRA, THE MISSISSIPPI SUPREME COURT DO NOT STRICTLY AND REGULARLY ENFORCE PROCEDURAL BARS AFFECTING FUNDAMENTAL CONSTITUTIONAL RIGHTS

SUCCESSIVE WRIT BAR

THE SUCCESSIVE POST CONVICTION PETITION RANDLE FILED IN THE STATE SUPREME COURT RAISED FUNDAMENTAL CONSTITUTIONAL RIGHTS THAT AFFECTED BOTH THE MISSISSIPPI CONSTITUTION AND THE UNITED STATES CONSTITUTION.

IN SMITH V STATE, 149 SO3D 1027, 1030 (PII) (MISS. 2014), THE MISSISSIPPI SUPREME COURT HELD THAT NEITHER THE COMMON LAW NOR OUR CONSTITUTIONAL LAW APPLIES THE DOCTRINE OF

RES JUDICATA to constitutional claims.

In Smith, the State Supreme Court noted that it has on numerous occasions reviewed errors affecting fundamental rights raised by successive pleadings. See: Smith, 149 So3d at 1032 (p10)

In Smith, the State Supreme Court also held that a doctrine of judicial expediency and economy must yield to the superior policy of enforcing constitutional provisions and no unlawful incarceration is constitutional,

Smith, 149 So3d at 1032 (p11) and (p13)

The Mississippi Supreme Court decision in Smith, supra, establish the Court does not apply the successive writ procedural

BAR TO CLAIMS AFFECTING A FUNDAMENTAL CONSTITUTIONAL RIGHT.

THE FUNDAMENTAL CONSTITUTIONAL RIGHT

As previously argued by Randle, Article 3, Section 26 of the Mississippi Constitution states that "IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL HAVE A RIGHT... TO DEMAND THE NATURE AND CAUSE OF THE ACCUSATION".

Again in Batiste v State, 121 So3d 808, 836 (P42) (Miss. 2013), the Mississippi Supreme Court ruled that a defendant is entitled to "NOTICE AND REASONABLE DESCRIPTION OF THE CHARGES AGAINST HIM SO THAT HE MAY PREPARE HIS DEFENSE".

In Thomas v State, 126 So3d 877, 879 (P7) (Miss. 2013), the Mississippi

SUPREME COURT RULED THAT THE FAMILIAR
CONSTITUTIONAL RIGHT TO NOTICE OF
CRIMINAL CHARGES IS GUARDED BY BOTH
THE STATE AND FEDERAL BILL OF RIGHTS

THE MISSISSIPPI SUPREME COURT IN
THOMAS MADE IT CRYSTAL CLEAR THAT
AN INDICTMENT THAT FAILS TO ALLEGE
ALL ESSENTIAL ELEMENTS OF A CRIME
RUN AFOUL OF BOTH THE MISSISSIPPI
CONSTITUTION AND THE UNITED STATES
CONSTITUTION, THOMAS, 126 SO3d AT 879
(PT) SEE ALSO BURCH FIELD V. STATE,
277 SO2d 623, 625 (MISS. 1973)

THOMAS AND BURCH FIELD, SUPRA,
ESTABLISH THAT THE MISSISSIPPI SUPREME
COURT HAS MANDATED A DEFECTIVE
INDICTMENT CONSTITUTE A

FUNDAMENTAL CONSTITUTIONAL RIGHT. THAT
A DEFECTIVE IN DIC TM ENT IS VOID
UNDER THE MISSISSIPPI CONSTITUTION AND
THE UNITED STATES CONSTITUTION. SEE:

THOMAS, 126 SO3D AT 879 (PT)

MISCARRIAGE OF JUSTICE

EVEN IF THIS COURT REJECTS RANDLES
PREVIOUS ARGUMENTS AND CLAIMS, THE
COURT CAN CONSIDER RANDLES CLAIMS
UNDER THE MISCARRIAGE OF JUSTICE
EXCEPTION.

A "FUNDAMENTAL MISCARRIAGE OF
JUSTICE" IS NECESSARY TO CIRCUMVENT
A PROCEDURAL BAR. SEE: SAWYER V.
WHITLEY, 505 U.S. 333 (1992).

THIS COURT HAS EXPRESSED A
WILLINGNESS TO EXCUSE A PETITIONER'S

PROCEDURAL DEFAULT" WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT." SEE: MURRAY V. CARRIER, 477 U.S. 478, 496, 106 S.Ct. 2639, 91 L.Ed. 2d 397 (1986); SCHUP V. DELO, 513 U.S. 298, 326-327, 115 S.Ct. 851, 130 L.Ed. 2d 808 (1995); HOUSE V. BELL, 547 U.S. 518, 536-537, 126 S.Ct. 2004, 165 L.Ed. 2d 1 (2006)

RANDLE WAS FOUND GUILTY OF CAPITAL MURDER DURING THE COMMISSION OF SIMPLE ROBBERY. A CRIME NOT SET FORTH IN THE ATTACHED INDICTMENT. THEREFORE, A MISCARRIAGE OF JUSTICE WILL OCCUR IF THE COURT DOES NOT REVIEW THE MERITS OF THIS CASE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffery Rand/P

Date: 3-29-2018