

No.: _____

IN THE
Supreme Court of the United States

JOHN PATRICK FLETCHER,

Petitioner

v.

**JASON LINGERICH, B.V.C.F. WARDEN;
THE ATTORNEY GENERAL FOR THE STATE OF COLORADO,**

Respondents

**On Petition for Writ of Certiorari
to the United States Court of Appeals for the Tenth Circuit**

PETITION FOR WRIT OF CERTIORARI

John Patrick Fletcher
Proceeding Pro Se Under 28 U.S.C. § 1654

B.V.C.F. East 1-S-12
P.O. Box 2017
Buena Vista, CO 81211

I. QUESTIONS PRESENTED FOR REVIEW

1. Whether an empanelled juror casting his friend's vote to convict, after having confessed during *voir dire* to being under instruction by this friend to "hang" the defendant, affected the entire trial mechanism from beginning to end.
2. Whether double jeopardy should attach, when the prosecution fails to move for a mistrial, after a self-confessed tainted juror casted his friend's vote to convict.

* * *

3. Whether the intentional concealment of material facts from a search warrant's affidavit – which remained concealed even through an *in limine* suppression hearing, and for years afterward – impaired an imprisoned *pro se* pauper's ability to "exercise due diligence" in uncovering such intentional concealment by state actors.
4. Whether intentional concealment by state actors, amounted to a state-imposed impediment to filing for federal *habeas* relief.

* * *

5. Whether *pro se* litigants are required to affirmatively assert AEDPA filing exceptions, for those exceptions to apply.
6. Whether imprisoned *pro se* paupers – with no access to the court record and no meaningful investigative abilities – are placed in an untenable position, by requiring *pro se* litigants to either assert *all claims* in their one-and-only *habeas*/post-conviction collateral attack, or waive any non-asserted claims.

II. LIST OF ALL PARTIES

A. Petitioner, *pro se*

7. John P. Fletcher #81478
B.V.C.F. East 1-S-12
P.O. Box 2017
Buena Vista, Colorado 81211

B. For Respondent Jason Lengerich

8. Colorado Attorney General's Office
C/O Christine Brady (24779)
1300 Broadway, 9th Floor
Denver, Colorado 80203

C. Corporate Disclosure Statement

9. John Patrick Fletcher, the petitioner in this matter, submits the following

statement of his corporate interests and affiliations for the use of the Justices of

this Court:
10. John Patrick is not a publicly-held corporation or other publicly-held entity.

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V. CITATIONS OF OPINIONS AND ORDERS ENTERED

A. State Conviction

11. Jun. 15, 1993 Conviction for First-Degree Murder; 2nd Judicial District for the City and County of Denver, Colorado;
12. Dec. 28, 1995 Direct Appeal, affirmed; Colorado Court of Appeals;
13. Jul. 22, 1996 Certiorari, denied; Colorado Supreme Court; cited as *Fletcher v. People*, 1996 Colo. LEXIS 266;

B. State Post-conviction Collateral Attack

14. Aug. 31, 2015 Post-conviction, denied; 2nd Judicial District Court for the City and County of Denver, Colorado;
15. Oct. 27, 2016 Post-conviction appeal, affirmed denial; Colorado Court of Appeals; cited as *People v. Fletcher*; 2016 Colo. App. LEXIS 1530;
16. Mar. 20, 2017 Rehearing, denied; Colorado Supreme Court; cited as *Fletcher v. People*, 2017 Colo. LEXIS 231;

C. Federal Habeas Application Under 28 U.S.C. § 2254

17. Jul. 14, 2017 *Habeas*, denied; U.S. District Court for the District of Colorado;
18. Jul. 28, 2017 Rehearing, denied; U.S. District Court for the District of Colorado;
19. Nov. 13, 2017 *Habeas* appeal, affirmed denial; 10th Circuit; cited as *Fletcher v. Lengerich*, 702 Fed. Appx. 795 (10th Cir. 2017);
20. Dec. 07, 2017 Rehearing, denied, 10th Circuit; cited as *Fletcher v. Lengerich*, 702 Fed. Appx. 795 (10th Cir. 2017);

VI. BASIS OF JURISDICTIONAL

21. This petition is seeking U.S. Supreme Court review of the final judgment by the Tenth Circuit Court of Appeals, entered on November 13, 2017, (Appendix D, pp. 1 – 2).
22. An Order denying a petition for rehearing was entered on December 07, 2017, and a copy is attached to this petition, (Appendix E, p. 1).
23. Jurisdiction is conferred upon this Court by Supreme Court Rules 10(a) and 13(1). The Tenth Circuit decision is reviewable by this Court under 28 U.S.C. § 1254.

VII. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

24. United States Constitution, Fourth Amendment, (Appendix F, p. 1).
25. United States Constitution, Sixth Amendment, (Appendix G, p. 1).
26. United States Constitution, Fourteenth Amendment, (Appendix H, p. 1).
27. 28 U.S.C. § 2244. Finality of determination, (Appendix I, pp. 1 – 3).
28. 28 U.S.C. § 2254. State custody; remedies in Federal courts, (Appendix J, pp. 1 – 3).

VIII. STATEMENT OF THE CASE

A. Lower Courts' Decisions

29. The Tenth Circuit denied a Certificate of Appealability on the District of Colorado's conclusion of law, that since Mr. Fletcher did not explicitly assert an AEDPA filing exception, his *pro se habeas* application, was time-barred, (Appendix D, p. 1).
30. Mr. Fletcher argued that the AEDPA statute of limitations filing exceptions, 28 U.S.C. §§ 2244(d)(1)(B) and 2244(d)(1)(D), do not explicitly state that they must be asserted to be applied; quite the contrary, they imply their application is irrespective of assertion, (Appendix L, pp. 13 – 14, ¶¶ 76 – 82).

B. Basis of Federal Jurisdiction

31. This case raises questions of interpretation of the AEDPA statute of limitations under 28 U.S.C. §§ 2244(d)(1)(B) and 2244(d)(1)(D), the Search Warrant Clause, the Impartial Jury Clause, and the Due Process of Law Clause.
32. The district court had jurisdiction under general federal question, conferred by 28 U.C.S. § 1331.

C. Development of the Facts

33. Mr. Fletcher's every attempt at moving the state and federal courts for access to the court record and an evidentiary hearing to develop these facts, has been thwarted by a seemingly unending salvo of technicalities.
34. If a court of record were to ever actually review the search warrant's affidavit, side by side with the police Supplementary Report, (as well as, review the *voir dire* transcripts), there would be no doubt as to the fundamental miscarriage of justice which has transpired against Mr. Fletcher by state actors.

D. Statement of the Facts

i. Claim One – Unlawful Warrantless Entry

(Appendix K, pp. 6 – 13 of 25, ¶¶ 1 – 47)

35. On the night of Mr. Fletcher's arrest, a two hour independent police investigation was conducted into an informant's story of having seed, what the informant thought, was a deceased person, (Appendix K, p. 8 of 25, ¶¶ 6 – 7; p. 9 of 25, ¶ 17).
36. When the investigation failed to corroborate any facts suggesting a homicide may have occurred, (Appendix K, p. 9 of 25, ¶ 14), police executed a much belated warrantless entry into Mr. Fletcher's home, for the stated purpose of searching for a possible deceased person, (Appendix K, p. 9 of 25, ¶¶ 15 – 18).
37. Subsequent to the warrantless entry, the investigator/affiant, knowingly omitted the above material facts from the search warrant's affidavit; instead, asserting the entry was executed under exigency, to provide emergency aid, (This is asserted from Mr. Fletcher having personally read the affidavit, due to the lower courts refusing him access to the court record, or an evidentiary hearing).
38. That intentional concealment of material facts from judicial review, remained concealed, even throughout an *in limine* suppression hearing, and for years afterward; concealment not exposed until May of 2015, by Mr. Fletcher, (Appendix L, pp. 15 – 16 of 29, ¶¶ 86 – 91).
39. (Point of note, the Tenth Circuit upheld the District of Colorado's ruling that because Mr. Fletcher's *pro se habeas* application did not explicitly assert a state-imposed impediment to filing on this issue, it was time-barred under the AEDPA statute of limitations.)

ii. Claim Two – Marionette Juror

(Appendix K, pp. 14 – 21 of 25, ¶¶ 48 – 69)

40. During *voir dire*, a candidate juror confessed on the record, to being under instruction by his friend to “hang” Mr. Fletcher, (Appendix K, p. 15 of 25, ¶ 51).
41. After a brief *sua sponte* inquiry, and no objection by either defense counsel or state prosecution, the trial court swore in this self-confessed tainted juror onto Mr. Fletcher’s jury panel, (Appendix K, p. 15 of 25, ¶¶ 51 – 52, 55).
42. The state prosecution then presented its theory of the case – based entirely upon the above illegally obtained “evidence”, and the resultant poisonous fruit – to this compromised jury panel, (Appendix K, p. 15 of 25, ¶¶ 56 – 57).
43. After which, during jury deliberations, the juror under outside pressure from his friend to “hang” Mr. Fletcher, faithfully obeyed his friend’s instruction, by casting his vote to convict.

IX. REASONS FOR ALLOWANCE OF THE WRIT

A. Fundamental Miscarriage of Justice

44. Without this Court's intervention, a man who has maintained his innocence since the night of his unlawful arrest, will die in prison for a crime he did not commit.

B. Exceptional Circumstances Warrant the Use of the Court's Supervisory Powers

i. Intentional Concealment of Material Facts and State-imposed Impediment to Filing

45. The lower courts need guidance on whether the intentional concealment by state actors of material facts from a search warrant's affidavit, which remained concealed even through an *in limine* suppression hearing, amounted to a state-imposed impediment to filing, in violation of the Constitution or laws of the United States, an AEDPA filing exception under 28 U.S.C. § 2244(d)(1)(B).

ii. Intentional Concealment of Material Facts and the Exercise of Due Diligence

46. The lower courts need guidance on whether the intentional concealment by state actors of material facts from judicial review, made the exercise of due diligence impracticable for an imprisoned *pro se* pauper.

iii. AEDPA Filing Exceptions as a *Pro Se* Affirmative Defense

47. The lower courts need guidance on whether *pro se* litigants have an affirmative obligation to specifically assert an AEDPA filing exception for that exception to apply.

X. CONCLUSION

48. For the above reasons, certiorari should be granted.

* * *

49. In the alternative – under Supreme Court Rule 16(1) – the issuance of a summary disposition on the merits, granting Mr. Fletcher an AEDPA filing exception under:

a. 28 U.S.C. § 2244(d)(1)(B):

“the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action”;

b. 28 U.S.C. § 2244(d)(1)(D):

“the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence”;

c. or both.

Respectfully submitted this Thursday, January 25, 2018.

Pro Se Petitioner's Original Signature: _____

John D #81478

DECLARATION UNDER PENALTY OF PERJURY

I, John Patrick Fletcher, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 25, 2018.

Pro Se Petitioner's Original Signature: _____

John D #81478

John Patrick Fletcher

Proceeding Pro Se Under 28 U.S.C. § 1654

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