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U.S. COURTS  
AUG 22 2011

Filed  
ELIZABETH A. SMITH  
CLERK, DISTRICT OF IDAHO  
Time

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA )  
Plaintiff )  
vs )  
EDGAR J. STEELE )  
Defendant )

Case No. 10-00148-N-BLW

Amicus Curiae  
Motion to Vacate Sentence

The authority for this motion is the duty of the movant to report to the court felonies committed in its jurisdiction under 18 USC 4 which states:

[Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.]

These felonies are violations of 18 USC 241 and 18 USC 242, which the defense counsel Robert McAllister and prosecutor Traci Whelan have conspired to commit. The pertinent portions of each statute are:

[18 USC 241

Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States,..... They shall be fined under this title or imprisoned not more than ten years, or both, .....

[18 USC 242

Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ..... shall be fined under this title or imprisoned not more than ten years, or both; .....

This criminal act was depriving defendant Edgar J. Steele of his 4th Amendment right to be immune from unlawful seizure of his person under 18 USC 17 which states:

[18 USC 17 Insanity defense

(a) Affirmative Defense.— It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) Burden of Proof.— The defendant has the burden of proving the defense of insanity by clear and convincing evidence.]

This motion relies upon the transcript of this trial and certain other references from the Internet. The transcript citations will be referenced as, for example, 5-1201-12, which denotes day 5/page 1201/line 12. Movant has never met the defendant and has merely subscribed to his newsletter for several years and communicated with him a few times by email. His knowledge of this case comes primarily from press reports, news conferences by the parties, and the trial transcript. He will show that Steele became insane as a result of surgery to repair a ruptured aorta.

Movant will further show that both defense counsel and prosecution knew this and conspired to cover it up. Defense counsel Robert McAllister did this to collect \$120,000 in attorney's fees for a defense that he knew was doomed to failure. Assistant U.S. Attorney Traci Whelan did this for the political gain associated with winning a conviction against a prominent White Nationalist. McAllister's assistant Amendola and U.S. Attorney Haws likely participated in this conspiracy but the extent of their involvement is not known to movant.

McAllister had been nearly disbarred by the Colorado Supreme Court in 2004, see <http://www.scribd.com/doc/57465734/Doc-198> . He had tried to cheat one of his consultants in a case who had to sue him to get her money. He was put on probation for 2 years and required to take ethics classes in lieu of disbarment. On or before 15 April, 2011, he knew that he was being disbarred for stealing \$100,000 from a client. See the previous link. He was also in financial trouble over failed real estate deals. This was at least 11 days before the Steele trial and he did not reveal this to his client or to the court.

McAllister knew that the Steele case would be the last one that he would ever try. He therefore did not fear damage to his reputation. That trial provided him with an opportunity to collect money with no risk due to incompetence or further unethical behavior. Had he conducted a proper insanity defense, the entire trial would likely

have been reduced to a short hearing regarding the defendant's mental condition. This would not have given him the opportunity to get the \$120,000 which was collected from Steele's supporters.

Defendant Steele nearly died from a ruptured ascending aortic aneurysm on 21 November, 2009. (4-890-1) Before that time, he was a highly skilled lawyer licensed to practice in California, Oregon, Washington and Idaho. He was flown by helicopter from Sandpoint to Coeur d'Alene and nearly died on the way. Open heart surgery was performed there to repair the large hole blown in his aorta. An hour had elapsed from the rupture before surgery. This gave time for clots to form at the site. It is nearly certain that parts of these clots broke off during surgery and lodged in his brain. This compounded the brain damage normally associated with open heart surgery.

This dirty little secret is known as pumphead in heart surgeon's locker rooms. A drop in IQ of 15 points or more is present in 42% of patients with this type of surgery. For a primer on this subject see <http://www.scientificamerican.com/article.cfm?id=pumphead-heart-lung-machine>

. Two patient histories are of interest from the comments after this article. A recovering patient shot himself in the head on his first unsupervised trip to the bathroom after returning home (see comment #1). In another case, an highly intelligent woman started to exhibit permanent childlike behavior after aorta surgery (see comment #3).

On 5 May, defendant suffered another ruptured aneurysm behind his nose which required another serious surgery. (4-890-14) After both the November and May surgeries, defendant was on powerful pain killers. These pain killers likely contributed to his insanity but movant is not in a position to evaluate their effect. A scientific paper in heart surgery induced brain damage is well beyond the scope of this motion.

Suffice it to say that both McAllister and Whelan knew that defendant was insane and did nothing to investigate the matter. Both of them interviewed Allen Banks well before trial. Banks was present at Steele's arrest. He has a PhD in chemistry and is a medical researcher. McAllister and Whelan learned from him that Steele was severely mentally disabled after his surgery. U.S. Attorney Haws had previously questioned Banks about Steele's mental condition. Here he is questioned by McAllister:

5-1201-12

[[Q. Dr. Banks, what is it that you wanted to say that you observed about Edgar Steele's mental condition?

A. Well, what I wanted to say was that, when I visited Ed in December after he had gotten out of the hospital, it was plain that he was mentally impaired and that he was -- not only was he weak; but,

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mentally, he was not the person that I had known before his heart attack. He was -- he was -- he was weak. He was -- in many ways, he was delusional. And he was sick.

But I noticed that over the months, that he got better. And month by month and week by week, as I saw him and checked up on him, he got better and better, and he got closer and closer to the Ed that I had known before the heart attack.

However -- and this is what I wanted to say -- he was still not a hundred percent. And if he had been getting worse, then I would have followed what Mr. Haws suggested, which would have been I would have said, "You know, you need to go back and see the doctor." But he was getting better, a little better, each time I saw him. So I was encouraged by that, and I thought he was going to make a full recovery. And so I didn't -- I didn't -- I didn't push him to go see a doctor, but he wasn't a hundred percent. He was just getting better and better.]]

Both Wheelan and McAllister had to have known that Steele's mental faculties had been seriously damaged. Both knew well before trial that Steele had written many steamy love letters from jail to his Ukrainian girlfriend Tatyana Loginova. This is the portion of two letters which were introduced as evidence:

5-1098-24

[[You could, perhaps, go to school in Panama, if you like, or summer school in Ukraine, or we could find you something to do -- work at something, language instructions? Take care of our babies, make love to me, whatever will make you happy. You get to be near friends, family for half of every year. I get the same for three months each year. We both get to be warm for the winter, which can be like a huge, extended vacation each year. Our kids learn both Russian and English as they grow up. It sounds great to me. What do you think, my love?"

July 3, I wish my son would come back up. Your surprise was sitting on the table in my house when all this happened. My ex promised me that she would mail it to you over a month ago, but I just learned that she never mailed it to you. I'm so sorry, Sweetheart. I'm trying to get one of the kids to get it from her and get it mailed to you. Your surprise, is a teddy bear that I have named 'Eddie Bear,' a copy of my book, and a copy of a magazine about the area.

I hope you haven't given up on me, Tanya. This truly has been out of my control. Remember how much I care for you always. I hope you haven't given up on me, Tanya. This truly has been out of my control. Remember how much I care for you always. I begin to suspect that my ex may be behind all this. I will tell you all about her another time. She knows that you are very special to me, and I am sure that's why she hasn't sent your box, as she promised me that she would do.]]

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As a trained lawyer who had represented jailed defendants, Steele should have known that all letters written by him from jail could be used against him. He lies to Tatyana about being divorced, tells her that he wants her to have his babies and promises her trips to Panama. These letters were used by the prosecution to show a motive for him to kill his wife. It is instead clear from these letters that the defendant had lost all contact with reality. These letters had been available to both Whelan and McAllister for months before trial. It had to be obvious to both of them that Steele was insane. Whelan should therefore have dismissed the charges or offered some kind of insanity plea to the defendant. McAllister should have pleaded an insanity defense.

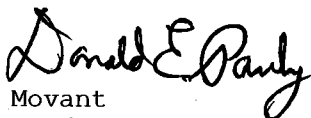
Therefore, movant requests that the court vacate judgement and order one or more of the following:

1. A mental exam of the defendant by a specialist in stroke induced brain damage from aorta surgery. This exam would evaluate those brain functions which could cause the acts which the prosecution alleges were committed. An ordinary mental exam would miss this damage and would be worthless. This should include PET scans and MRI scans as well as detailed tests of mental functions.
2. That the defendant be released into the custody of Cyndi Steele and that she be appointed his guardian. She should be further required to insure that he receives all needed medical treatment.
3. That the charges be dismissed with prejudice because of gross misconduct by the government.
4. That the charges be dismissed with prejudice because defendant could not properly contribute to his own defense.
5. That defendant be given a new trial due to lack of effective counsel.
6. The sanction of the prosecuting attorneys as the court sees fit.
7. The sanction of the defense attorneys as the court sees fit.
8. That this conspiracy be referred for prosecution by the Attorney General of the United States.
9. That another District of the U.S. Attorney General retry the Defendant.

In the alternative, movant requests that the defendant's sentencing be continued as required in the interests of justice. This would be if prior to sentencing his mental evaluation is not complete, the appointment of his guardian is not complete or the investigation into this conspiracy is not complete.

Respectfully submitted by electronic mail this 10th day of August, 2011

Donald E. Pauly



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