1/8/19

No. 18-1480

IN THE

Supreme Court of the United States

Jason Caissie, Petitioner

v.

Town of Raleigh, Mississippi

On Petition For Writ Of Certiorari
To The Mississippi Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Jason Caissie
2362 Charlie Pounds Rd
Stantonville, TN, 38379
832-494-7843

Questions Presented

1. Whether the State of Mississippi is in direct conflict of the due process protections provided in the 14th, 5th, and 6th Amendments when they use a Uniform Traffic Ticket that does not "set out facts sufficient to constitute a crime", as they have no state law, and they only cite National Driver Register codes (federal record keeping codes), on the charging document and then tries the defendant on State Statutes that are not on any sworn charge.

2. Whether the State of Mississippi is in direct conflict with Cheek v U.S. when they enhance their fines "greatly in excess of the normal tax imposed" without any evidence or testimony of the defendant's "willfully or wantonly" violating any law.

3. Whether the Mississippi's "right to counsel" rules and legislation are in conflict with the 6th Amendment guarantee to "assistance of counsel" when a defendant's "assistance of counsel" is limited to those that are lawyering for-profit, which are "licensed attorneys".

4. Whether a State, that has a two-tier system, violates the 14th and 5th amendment due process protections when it mandates the imposition of substantial financial burdens on a defendant to chill the exercise of his absolute right to a trial de novo where full constitutional protections are available.

Interested Parties

There are no parties to the proceeding other than those named in the caption of the case.

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Constitutional Provisions

U.S. Const. Amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of

the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amend. XIV (Section 1):

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Petition for a Writ of Certiorari

Petitioner, Jason Caissie, respectfully petitions for a writ of certiorari to review the judgement of the Supreme Court of Mississippi.

Opinions Below

The opinion of the Mississippi Court of Appeals appears at appendix B to this petition. The court's opinion is published at 254 So. 3d 849

Jurisdiction

Smith County Circuit Court issued its decision on 5/31/2016. The Mississippi Court of appeals affirmed the decision on 3/06/2018. The denial of rehearing was filed on 7/17/2018. The denial of the Petition for Writ of Certiorari to the Mississippi Supreme Court was filed on 10/11/2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

Statement of the Case

Jason was traveling through Mississippi from a friend's funeral when he was stopped, seized, and taken up on April 25, 2015 at a "Driver's license checkpoint". On April 27, 2015, Jason paid a bonding agency to post a $1000 dollar bond to bail him out of jail. Two traffic tickets were issued. The tickets had no state law, ordinance, or statute, and only NDR codes were cited. Jason asked for the statute or ordinance that the State was relying on in a Motion to Dismiss filed June 8, 2015 (two months prior to trial). The City of Raleigh did not respond to Jason's Motion to Dismiss. At trial on August 10, 2015, Jason again asked for the statute or ordinance that the Prosecution was relying. The Judge, Prosecutor, and the police officer refused to provide it. Jason then said, "without knowing the statute ... how can I plea?" The Prosecutor's (David Garner) response was, "the laws are well published". The Judge then said, "it is common knowledge that we have jurisdiction over this". Jason then pointed out Hall v State[1] required that he receive notice. When Jason

1. [T]o improperly place and unindicted charge before the [fact finder], subject[s] the defendant to a trial by ambush ... It would violate constitutional principles to allow the State to cause such a blatantly unconstitutional error[.] Hall v. State, 2012-KA-01282-SCT (Miss. 12/12/2013)

asked for the charging document, the Prosecutor's response was "You did receive a copy of these tickets, did you not?" Jason stated that those tickets did not have any statutes on them. The municipal court entered a 'not guilty' plea on Jason's behalf over Jason's objection and then proceeded to trial. After the Prosecution was finished asking the witness all of his questions, it was Jason's turn to question "the witnesses against him". When Jason got to his second page of notes, the Prosecutor asked Jason if he was going to ask the officer all those questions (pointing to the papers Jason had in his hand). Jason replied, "Yes". The Prosecutor said, "we are not going to allow that". The Judge nodded his head in agreement and said, "we are not going to allow that". The Prosecutor stated that "this is not a court of record" and "if you want to ask all those questions, we will preserve all of your rights and you can ask these in a court of record". The Judge said, "We will preserve all his rights and he can ask these questions in a full trial, in a court of record". Jason objected to not being able to question his accuser. The Judge said, "If you want to contest this, you will need to appeal it and you will have a full trial".

The first-tier "court" convicted Jason and set the bond amount required to appeal the decision. Jason

was not thrown back in jail and not threatened with jail, but he still had to post **another** appearance bond of $1000. Jason had to pay another $500 for costs for this "absolute right" of a trial de novo. Jason had to pay a total of $1500 for this "full trial" so that he could have the **first** opportunity to confront his accuser and to possibly learn the statute that he was found guilty of violating. Even though $1000 of the $1500 was called an "appearance bond", after Jason made all of the required appearances, the courts refused to return the bond to Jason (See Appendix D), using the $1000 to pay the fine.

At a Motion Hearing on November 16, 2015, Jason informed the court of the due process violation in Municipal Court and that "[the tickets] had no statutes or ordinances on [them]" (T13. L3-4). The Circuit Court then directed the State to provide Jason with the Statute. The State later merely referenced two penalty statutes but never provided any sworn charge. When Jason attempted to point out Judicial and Prosecutorial misconduct, the Prosecuter stated, "what happened in the lower court has no bearing on this trial" and the Circuit Court Judge stated, "all that stuff doesn't matter" (T11).

At Circuit Court on May 12, 2016, Jason requested for his friend to provide assistance of

counsel at trial. The Court denied Jason's counsel of choice. His request was denied without any evidence on the record that Jason's counsel of choice was going to attempt to "practice law" or "advise him of his legal rights and duties".

Jason later attempted to question the officer about the NDR codes on the tickets (that the officer checked and swore to) and again asked "where is the charging document?" (T70 L7-26)

DEFENDANT JASON CAISSIE: what is a b51 statute or ordinance?

MR. GARNER: Your Honor, we object unless he can lay some kind of predicate as to how this is related to these charges.

DEFENDANT JASON CAISSIE: Is this not a charging document?

THE COURT: That's an affidavit

DEFENDANT JASON CAISSIE: Where is the charging document?

THE COURT: Mr. Garner?

MR. GARNER: The affidavit has been admitted into evidence exhibit 1 and exhibit 2, your honor.

DEFENDANT JASON CAISSIE: As the charging document?

MR. GARNER: It's the affidavit. It's the citation recognized by the State of

Mississippi for these misdemeanor offenses w**hether you call it a charging document, an invitation to court or whatever**, Your Honor, it's an affidavit.

During the trial, the court ruled the following:

a. "We are not here about a tax case or business licenses." (T. 73 L. 10-11).

b. "This is not a tax case" (T.97 L9)

c. "This is not a trespass case".

d. "We are not under Federal law here" (T 71 L. 3-4)

e. "you are not charged with any type of violation of any business license or commerce or anything of that nature." (T76 L6-9)

The Circuit Court then proceeded to convict Jason on MS statutes not on the original and only charging document. To this date, Jason has not been provided with any main statute empowering the court imposing a duty on Jason to obtain a privilege tax receipt.

Reasons for Granting the Writ

I.

The Court should grant the Writ to Decide Whether the State of Mississippi is in direct conflict of the due process protections provided in the 14th, 5th, and 6th Amendments when they use a Uniform Traffic Ticket that does not "set out facts sufficient to constitute a crime", as they have no state law, and they only cite National Driver Register codes (federal record keeping codes), on the charging document and then tries the defendant on State Statutes that are not on any sworn charge.

By only referencing NDR codes on the tickets that are used as the charging instruments, the State is stuck with the terms of the NDR codes and the penalties for violating those codes (the only criminal penalties for violating these NDR codes can be found at Public Law 97-364 96 Stat. 1746 October 25, 1982 Sec. 208 (a), (b)); and NDR codes are not a charging provision. By only referencing NDR codes, which are merely federal record keeping codes, on the charging

documents and then prosecuting the accused on state Statutes is in direct conflict of the 6th Amendment.

> *"In all criminal prosecutions, the accused shall ... be informed of the nature and cause of the accusation" - U.S. Const. Amend. VI*

The charging documents must state *"facts and circumstances as will inform the accused of the specific offence." United States v. Hess, 124 U.S. 483, 487* A crimnal charge *'not framed to apprise the defendant "with reasonable certainty, of the nature of the accusation against him . . . is defective'.United States v. Simmons, 96 U.S. 360, 362*

> *It has long been recognized that there is an important corollary purpose to be served by the requirement that [a criminal charge] set out "the specific offence, coming under the general description," with which the defendant is charged. This purpose, as defined in United States v. Cruikshank, 92 U.S. 542, 558, is "to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had."*

Russell v. United States, 82 S. Ct. 1038, 369 U.S. 749, 768 (U.S. 05/21/1962)

The only law on the MS Uniform Traffic Tickets, which the officer swears to from personal knowledge and are used as charging documents, are NDR Codes. The codes are not in MS State law. They are found at 23 CFR Ch.3 Part 1327 Appendix A. part 1.

"The words of the indictment directly and without ambiguity disclosed all the elements essential to the commission of the offense charged, and, therefore, within the meaning of the Constitution and according to the rules of pleading, the defendant was informed of the nature and cause of the accusation against him." Burton v. United States., 26 S. Ct. 688, 202 U.S. 344, 372 (1906) (internal citations omitted)

"No essential element of the crime can be omitted without destroying the whole pleading. The omission cannot be supplied by intendment, or implication, ***and the charge must be made directly and not inferentially, or by way of recital."*** *. . . "It is*

an elementary principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition, but it must state the species -- it must descend to particulars. ... For this facts are to be stated, not conclusions of law alone. ... (488) Such particulars are matters of substance, (489) and not of form, and their omission is not aided or cured by the verdict.'" United States v. Hess, 124 U.S. 483, 486

The Mississippi uniform traffic tickets are being used in Mississippi as the charging instrument. They have no state law or main statute empowering the court on the face of the instrument. There is no state enforcement statute on the face of the ticket.

The Mississippi traffic tickets contain only items found in the 23 CFR Ch.3 Part 1327 Appendix A. part 1, this is part of a federal highway funding by signed agreement between US Sec. of Transportation and State Officials.

NDR, which was established and is enforced under Federal Commerce

Powers, Public Law 97-364, 97th Congress-Oct. 25, 1982, 96 Stat. 1746, 23 USC 401 note, Criminal Penalties Sec. 208 and United States v. Mersky, 361 U.S. 431, 438 (1960) states the statute and regulation are inextricably intertwined and one does not have force without the other.

Even though Mississippi Courts are using these Mississippi state traffic tickets that only refer to NDR codes as their charging document, the state is not trying anyone for a data breach or wrongful use of data under this Federal law.

By referencing only NDR codes on the Mississippi traffic tickets/charging documents and then convicting the accused on State Statutes that are nowhere to be found on the charging document, the State is convicting an accused on a charge not made.

> *"It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process." Cole v Arkansas, 333 U.S. 196, 201.*

II.

The Court should grant the Writ to Decide Whether the State of Mississippi is in direct conflict with Cheek v U.S. when they enhance their fines "greatly in excess of the normal tax imposed" without any evidence or testimony of the defendant's "willfully or wantonly" violating any law.

A license is a tax receipt for privileged activity to engage in the business designated.

> *"[Licenses] were regarded merely as a convenient mode of imposing taxes on several descriptions of businesses and of ascertaining the parties from whom such taxes were to be collected...* ***They are mere receipts for taxes****". License Tax Cases 72 U.S. 462, 472.*

> *"A* ***license confers a privilege****, and makes the doing of something legal, which, if done without it, would be illegal...Calling the tax receipt a "license" and the tax a "license tax" does not confine the lawful authority to transact this business to those who have paid the tax and procured the "license" any more than an*

ordinary tax on property creates a right or authority to own property. ***A license is a police regulation controlling the exercise of a profession, business or occupation.*** *" Flanigan v. Sierra County., 25 S. Ct. 314, 196 U.S. 553*

*"**The essential elements of the definition of privilege is occupation and business**, and not the ownership simply of property, or its possession or keeping it. The tax is on the occupation, business, pursuits, vocation, or calling, it being* ***one in which a profit is supposed to be derived by its exercise from the general public****, and not a tax on the property itself or the mere ownership of it."... "The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such." Phillips v. Lewis, 3 Shann. Cas. 231.*

To recover penalties that "are greatly in excess of the normal tax imposed" there must be "proof of willfulness or wantonness, or the equivalent thereto"

that the man or woman that is engaged in that privileged activity failed "to pay the normal tax."

"Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty." Cheek v. U.S., 498 U.S. 192, 202 (1991) NO. 89-658.

"..... to reaffirm the rule that in suits to recover penalties, strictly statutory, the proof of wilfulness or wantonness, or the equivalent thereto, is nonessential only in those cases where the penalty prescribed by the statute is a percentage of the normal tax or is not greatly in excess of the amount thereof and that in all such cases where the amount ***of penalties*** *sought to be recovered are* ***greatly in excess of the normal tax*** *imposed by law, there can be no recovery of the same without* ***proof of a*** *wilful, wanton or reckless* ***failure*** *of the defendant* ***to pay the normal tax*** *or other statutory liability at the time the same becomes*

due and payable. Mercury Transport v. Vehicle Comm., 21 So. 2d 25 (Miss. 1945)

$500 is "greatly in excess" of the cost of a driver's license. MS charges $18 for a four year MS driver's license. This is a tax of less than two pennies a day to use the highways as an instrumentality of commerce. The $500 fine (and possibly six months in jail) is almost a fifty thousand fold penalty. In Jason's case, this was the amount fined with no evidence or witness testimony on the record that Jason "willfully or wantonly" violated any law.

III.

The Court should grant the Writ to Decide Whether the Mississippi's "right to counsel" rules and legislation are in conflict with the 6th Amendment guarantee to "assistance of counsel" when a defendant's "assistance of counsel" is limited to those that are lawyering for-profit, which are "licensed attorneys".

It is true that all lawyers are "counsel" but not all "counsel" are lawyers. United States v. Tarlowski,

305 f. Supp. 112 is an example that not all "counsel" are "lawyers" when the refusal to permit Tarlowski's accountant to be with him during questioning was deemed to be a denial of counsel.

In this case, there are no facts on the record that claims that Jason wanted to be "represented" or "advised of his legal rights and duties" or that his counsel of his choice was going to "practice law".

> *"For a government official to mouth in a ritualistic way part of the warning about the right to counsel while excluding the person relied upon as counsel, is in effect, to reverse the meaning of the words used." United States v. Tarlowski, 305 F. Supp. 112 (E.D.N.Y. 1969 Nos. 68-CR-278, 183)*

> *"In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of Counsel for his defense" - 6 Amendment to the U.S. Constitution*

The term "attorney" was around when the founding fathers wrote the 6th Amendment. The Founding Fathers chose to use the word "counsel"

and not "attorney" when writing the 6th Amendment. The 6th Amendment also does NOT read "to have Representation from Counsel" but it reads, "to have the Assistance of Counsel for his defense". Rights do not come from the government or the Constitution. The Founding Fathers recognized this fact when they wrote in the Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their **Creator** with certain unalienable Rights,...". Since the Mississippi Courts would only allow Jason to have "assistance of Counsel" by a "licensed attorney", one must conclude that the Mississippi Courts believe that this God given right to "Assistance of Counsel" did not come into existence until the creation of the "licensed attorney".

The Mississippi Rules of Criminal Procedure (MRCrP) intentionally convert "assistance of Counsel" into "representation by a licensed attorney". MRCrP 7.1 broadly targets "right of counsel" with limiting the scope of counsel to the privilege afforded only to licensed attorneys.

MS legislature and judicial branches have abolished assistance of counsel through statutes,

judicial rules, and judicial decisions. The State then substitutes options limited to individuals beholden to the State for State granted privilege license or allows one to waive his right to assistance of counsel.

The MRCrP has no guidance for when a man seeks to have "assistance of Counsel". In MRCrP 7.1 (Right to counsel; waiver,) they list the following sections: (a) Right to be Represented by Counsel; (b) Right to Appointed Counsel; (c) Waiver of Right to Counsel; (d) Withdrawal of Waiver. Their rules are silent on "Assistance of Counsel". Jason did not request to be "represented by Counsel", nor is there any evidence on the record that Jason's counsel of choice was going to attempt to "represent" Jason or "[advise him] of his legal rights and duties". Jason did not request the court to "appoint counsel" and objected to the arm-chair counsel that the court appointed to him.

When the State denied Jason the assistance of Counsel without any evidence on the record that Jason's counsel of choice was going to represent him or "practice law" the State violate Jason's 6th Amendment right to "assistance of counsel".

IV.

The Court should grant the Writ to Decide Whether a State, that has a two-tier system, violates the 14th and 5th amendment due process protections when it mandates the imposition of substantial financial burdens on a defendant to chill the exercise of his absolute right to a trial de novo where full constitutional protections are available.

The State of Mississippi's Uniform Rules of Circuit and County Court, MS URCCC 5.01, states that direct appeals from municipal court shall be by trial de novo. *"Mississippi's two-tier system is fairly typical. A defendant convicted in a Mississippi [first-tier] court has an absolute right to a trial de novo..." Thigpen v. Roberts, 104 s. Ct. 2916, 468 U.S. 27 (U.S. 06/27/1984) No. 82-1330.* While it might be true that in 1984 Mississippi offered an absolute right to a trial de novo and the first-tier, municipal court judgement is in effect *no more than an offer in settlement*[2], MS URCCC 12.02 restrains in advance the exercise of the right to a trial de novo and inevitably suppresses defendants' exercise thereof.

2. Thigpen v. Roberts, 104 s. Ct. 2916, 468 U.S. 27 (U.S. 06/27/1984) No. 82-1330

First, MS URCCC 12.02 A. 1. mandates filing both a cost bond and appearance bond or cash deposit with the notice of appeal. Failure to do so will subject the appeal to dismissal with prejudice by the court or by motion of another. Second, MS URCCC 12.02 B. 1. & 2. instructs that the bonds or cash deposits shall be determined by the first-tier court. Third, MS URCCC 12.02 C. states the first-tier record is 'competent evidence' and upon filing notice of appeal and bonds or cash deposits the prior judgement shall be "stayed."

Mississippi Supreme Court (MSSCT) has placed a hedge of protection around Municipal Courts. First, they set rules that require the accused to pre-pay all the costs and money judgements before they can be prosecuted a second time in the second-tier, where the rules state the judgement is merely 'stayed' and the record is competent evidence. Second, MSSCT has ruled if defects exist in the first-tier they amount to harmless error and was as if there had never been a trial.

In Mississippi's version of a trial de novo, *all* reversible errors, insufficiency of evidence, no evidence at all and rights violations in the first-tier are "wiped out" as if they never happened.

Even if defects exist in the justice or municipal court's judgment, such defects amount to harmless error when a defendant appeals and receives a trial de novo. (recognizing that a de novo trial in circuit court ***"was as if there had never been a trial before a justice of the peace, and was effectual to correct any and all errors committed by the justice of the peace either as to a ruling of law, or as to a ruling on facts"*** *(emphasis added)). Because Caissie appealed his misdemeanor convictions and received a de novo trial in circuit court, we find no merit to his claims regarding the alleged defects in and the validity of the municipal court's judgment against him. Caissie v. State*[3]*, 254 So. 3d 849 (¶7) (Miss. App. 03/06/2018) (internal citations omitted)*

The Mississippi Municipality if it chooses to hire a judge and prosecutor, then its court is given complete immunity from review of judicial and prosecutorial constitutional violations in its court. The corporate municipality is relieved of costs that

3. Mississippi courts got this wrong as it is the town/municipality of Raleigh as appellee per MS Code § 21-13-19.

any other corporation would have to front for what amounts to establishing a debtor creditor relationship with the defendant after final determination.

The defendant is denied any opportunity to raise these matters in state or federal district courts. The defendant is barred from federal court as he must first exhaust state remedies and the state protecting its revenue and the municipality with an overly broad latently ambiguous privilege tax scheme by pursuing these unassessed, yet alleged, privilege tax debts as criminal matters.

This means that, like in this case, an accused can ask for the law he is being charged and tried on and the municipal corporation can respond with "it is well published" and "it's common knowledge". Then, as in this case, the court can tell the accused, when attempting to confront his accuser, the municipality through its attorney states "if you want to ask all those questions, we will preserve all of your rights and you can ask these in a full trial, in a court of record", which was parroted afterwards by the municipality's judge. This is the same effect as the court saying, "If you wish confront your accuser and to be provided the law that you were just convicted of

and be afforded all due process protections, then the municipality will determine the mandatory bonds or cash deposit for you to pay so you may have access to a 'full trial'".

The Prosecution was afforded to put on his case-in-chief and question Jason's accuser. On the other hand, Jason would have to appeal to confront his accuser and figure out what the nature and cause of a "B51" and "D36" might be. Through MSSCT approved rules of court Jason's right to trial de novo was allowed to be **conditioned** by employees of the municipal corporation. Jason was **prejudiced** by both not being afforded the equal opportunity to put on a case as well as put evidence into a "wiped out" record[4] that the rules bless as "competent evidence."

> *"This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." Rinaldi v.*

4. MS URCCC 12.02 C. "... The record certified to the court on appeal from the lower court is competent evidence. ..."

Yeager, 384 U.S. 305, 310. (Internal citations omitted)

If *'penalizing those who choose to exercise' constitutional rights, 'would be patently unconstitutional.' United States v. Jackson, 390 U.S. 570, 581*, then that is the effect in this case by putting a price on the absolute right to a trial de novo and by the appellate courts decisions that any defects in the first-tier were harmless affords the first-tier municipal employees unchecked discretion to set fines just high enough to avoid the defendant's exercise of a trial de novo and allows all due process violations to go unreviewed and unchecked.

CONCLUSION

For all of these reasons and in the interest of justice, the petition for a writ of certiorari should be granted.

Dated 1/8/2019

Respectfully submitted,
s/ Jason Caissie

Jason Caissie
2362 Charlie Pounds Rd
Stantonville, TN, 38379
832-494-7843