No. 18-6742

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Albert Uriah Mathis — PETITIONER
(Your Name)

VS.

State of North Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Albert Uriah Mathis
(Your Name)

648 Shew Ridge Mission Road
(Address)

Wilkesboro, NC 28697
(City, State, Zip Code)

(336) 262-6859
(Phone Number)

QUESTION(S) PRESENTED

1) Can a judge order a mistrial in a case simply, so he may attend a Dr. appointment?

2) Can a fair trial be had when a deadline of 5pm the same day is placed upon the proceedings? Is this in violation of the Due Process right to a fair trial guaranteed by the 14th amendment to the constitution?

3) Was ineffective assistance of counsel committed by failing to object a mistrial despite my obvious desire to have the case completed by the first tribunal?

4) Was a second trial barred by the double jeopardy clause of the constitution?

5) Can a prosecutor use his calendaring authority to allow himself a trial run of a case of unsure outcome?

LIST OF PARTIES

[X] 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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TABLE OF AUTHORITIES CITED

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_____*o the petition and is

[ ] reported at_____; or,
( ) has been designated for publication but is not yet reported; or, I
) is unpublished.

The opinion of the United States district court appears at Appendix_____*o the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or, [
] is unpublished.

[X] For cases from state courts:

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

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or, [
[x] is unpublished.

The opinion of the North Carolina Court of Appeals
_____court appears at Appendix A_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or, [
[x] is unpublished.

JURISDICTION

[ ] For eases from federal courts:

The date on which the United States Court of Appeals decided my case was _____

[ ] 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).

[X] For cases from state courts:

The date on which the highest state court decided my case was August 14 2018 A copy of that decision appears at Appendix __B____

[ ] 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

5th Amendment of the US Constitution (Double Jeopardy)

14th Amendment of the US Constitution (Due Process)

STATEMENT OF THE CASE

I was tried twice in this matter. The first trial occurred on February 11 and 12, 2015, and ended in a mistrial. The second trial was held on April 13 and 14, 2016.

A warrant for my arrest in this matter was issued on April 16, 2013. I turned myself in, for formal arrest, to the Sheriff's office of Wilkes on April 17, 2013 and made a statement to officer K.D. Elledge about the matter. On April 18, 2013 I was brought to Wilkes District Court for a felony first appearance and assigned counsel. The case was then calendared monthly, requiring my appearance in person before the district court of Wilkes. On July 21, 2014 I was indicted by the grand jury in Wilkes superior court for assault with a deadly weapon inflicting serious injury with intent to kill in violation of N.C. General Statute 14-32(a). The deadly weapon alleged in this indictment was " a pair of steel toed boots." The matter was calendared every 6 weeks in Wilkes Superior Court, requiring my appearance in person for roll call on the first day of the Superior Court session.

The matter came on for trial before Superior Court Judge David L. Hall. The case was tried between February 11 and 12, 2015. Judge Hall declared a mistrial at the conclusion of States evidence.

The Grand Jury of Wilkes issued a superseding indictment on April 6, 2015, resulting in another order for arrest being issued on April 8, 2015. I again turned myself in, for formal arrest, to the Sheriff's Office of Wilkes on April 9, 2015. On April 9, 2015 I was again brought to Wilkes District Court for a felony first appearance and assigned counsel. The new charges were ordered to superior court with the existing charges.

After many continuances grated for the treatment of the victim's cancer with surgery and chemotherapy, the second trial in this matter began on April 13,2016 before Superior Court Judge Lindsey Davis. On April 14,2016 a jury convicted me of assault inflicting serious injury, an A1 misdemeanor.

On April 27,2016 I gave written notice of appeal to the North Carolina Court of Appeals.

By dismissing my case the North Carolina Supreme Court refused to recognize the US Supreme Courts guiding principles in Chapman v. California 386 US 18 (1967) and Arizona v. Fulminante 499 US 279 (1991) as well as the recent decision in Weaver v. Massachusetts 582 US____ (2017) regarding a structural error which affects" the framework within which the trial proceeds rather than simply an error in the trial process itself". As well as the unreasonable and unfair time limit place on the proceeding.

The NC Court of appeals decision concerning prejudice prong of Strickland v. Washington 466 US 668 (1984). Prejudice is found in the following cases concerning double jeopardy.

Illinois v. Somerville 410 US 458 (1973) "the determination by the trial court to abort a criminal proceeding where jeopardy has attached is not one to be lightly undertaken, since the interest of the defendant in having his fate determined by the jury first impaneled is itself a weighty one. US v. Jorn 400 US 470 (1971). Nor will the lack of demonstrable additional prejudice preclude the defendants invocation of the double jeopardy bar in the absence of some important countervailing interest of proper judicial administration" (the dissenting opinion also provides clarity)

Green v. US 355 US 184 (1957) " the state, with all its resources and power, should not be allowed to make repeated attempts to convict an individual for an alleged offense, therby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that, even though innocent, he may be found guilty"

Arizona v. Washington 434 US 497 "Because jeopardy attaches before the judgement becomes final, the constitutional protection also embraces the defendants "valued right to have his trial completed by a particular tribunal" the reasons why this "valued right" merits constitutional protection are worthy of repetition. Even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exist whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial."

As for the objective standard in Arizona v. Washington 434 US 497, it is simply found in the American Bar Associations Defense Function general standards

At about 10:20 on Thursday February 12,2015, Judge Hall announced to the court for the first time his need to see a retina specialist on the following day "now let's take this opportunity to discuss the scheduling issue. Mr. Bauer knows this because he was in Yadkin with me when it happened. I can't recall if I mentioned this to Mr. Ferrell or not, but I have an appointment in the morning in Winston-Salem with a retina specialist. Thank you, ma'am. You're still under oath. With a retina specialist, apparently, I have a hole in my retina. And I don't know how long that is going to take so if the matter is not concluded by 5:00pm today, it may be tomorrow afternoon before we can come back, I don't know." After a bench conference concerning his eye exam Judge Hall stated, "the matter might have to be mistried out of manifest necessity, which I'm trying to avoid, but I indicated to the attorneys that I would revisit the matter at lunch and we will see how much progress we are making". (Appendix C page 19-21)

The prosecution continued with its case and put its final witness on before lunch. Immediately following lunch, the prosecution requests more time to locate a witness a bench conference occurs, the contents of which the court orders my attorney not to disclose to me. (Appendix D page 4)

At this point the prosecution makes a motion to amend the indictment, my attorney objects and an hour and a half decision ensues and at about 2 pm Judge Hall takes a recess and my attorney takes me to a back room to discuss the coming mistrial. During this discussion I stated that I was getting screwed over and didn't want a mistrial, which he explained to me that at 5pm there was going to be a mistrial declared period, my options were as he later outlined for the court, to testify and try to get all of the case finished by 5 pm, or put the case to the jury without testifying and without a self-defense instruction. Essentially, I was given a "Hobsons Choice". When court resumed at 2:25 pm my attorney requested a bench conference. After the bench conference Judge Hall stated that he had contacted Professor Jessie Smith at the UNC School of Government and had a conversation with her and then denied the motion to amend the indictment. Immediately after stating that a motion to dismiss would be unsuccessful, stated "Which brings me to my greatest concern now, which it is presently 2:30 on Thursday, as I indicated to counsel on Monday, I have a very important appointment with a specialist tomorrow morning involving a hole in my retina, in my left eye and a floater in my right eye. Further we have one juror, juror number 9 no juror number 8, his wife is having a heart catheterization and a pacemaker procedure tomorrow and I have an alternate juror Mr. Maston, whom I have no confidence in because I believe if I inquire I believe his answer is going to be he has not been able to hear much of what has transpired and I cannot hold over, so, I'm concerned about that. Let me hear from the parties" (Appendix D pages 14-15)

My attorney then tells the court " Your honor, we appreciate the court's ruling and we are prepared to go forward, but in light of the time constraints Mr. Mathis, it would be my intent to put him on the stand, but quite frankly I don't personally believe that this jury will have any meaningful time to deliberate if, in fact, it gets to them by 5 o'clock.

So, my client is in agreement and I have talked to him because I have explained and will state for the record my main concern right now is, if I put him on the stand, time expires and we come back for another trial at a later date, I have just provided Mr. Bauer and the State with another 15 to 20 minutes of direct cross-examination that could, in fact, be utilized against him at a later trial. I do not wish to do that, but I do not want to send this case to the jury without Mr. Mathis testifying" (Appendix D page 15)

At this point Judge Hall confirms my attorneys concern for a self-defense jury instruction and declares a mistrial without any consideration for my "valued right to have his trial completed by a particular tribunal" Wade v. Hunter,336 US 684 (1949) nowhere in the record is there any discussion of the possibility of continuing the case until the following Monday prior to discharging the jury, only after discharging the jury does Judge Hall give his reasoning for not being able to finish the case the following week due to another trial he was involved in.

I would argue that the courts mistrial is best stated in the opinions of US V. Dinitz 424 US 600 (1976) "The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial request and thereby subject defendants to the substantial burdens imposed by multiple prosecutions. It bars retrials where "bad-faith conduct by a judge or prosecutor" US v. Jorn 400 US 470 (1971), threatens the harassment of an accused by successive prosecutions or the declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict the defendant."

I would also argue that Judge Hall in this case is personally motivated to declare the mistrial, causing him to be biased not by monetary compensation as in Tumey v. Ohio 273 US 510 (1927) but by his personal desire to make it to his "very important appointment with a specialist".

I would also argue the specific timing of Judges Halls mistrial was ensure the prosecution another full bite at the apple. Had the case been allowed to proceed properly as it did in the second trial, the motion to dismiss at the close of states evidence eluded to by my attorney earlier would have resulted in the dismissal of the bulk of the prosecutions indictment, leaving me with only misdemeanor charges to be resolved in Wilkes District Court and avoided my further indictment and arrest. Further by placing the deadline of 5pm on the proceedings the court undermined the fundamental fairness necessary for due process guaranteed by the 14th amendment, after the deadline was announced the prosecutions began delaying the trial so the state could secure a mistrial declared for manifest necessity, thus ensuring himself another full trial. Given the courts clear bias toward the prosecution and lack of consideration of the defendant's double jeopardy rights, I would also argue that the court took on the role of prosecutor instead of judge.

I would argue that the time limit error here affected the very framework under which the trial proceeded from the time of its announcement. Had the trial proceeded fairly I would have been given the opportunity to testify and have my case finished before this jury. As it stood I was afraid to testify with the given deadline for fear that I would open myself up to additional charges and be on the court record admitting to the charges which may have been a direct result of my own testimony.

Why my attorney didn't object to the deadline or the mistrial is a mystery to me, the reason I was silent is best stated in Justice Reinhardt's dissenting opinion in US v. Martinez 883 F2d 750

"First, the record reveals beyond debate that Martinez was unaware of the rules of waiver prescribed today by the majority. My colleague's novel procedure requires the defendant to ignore the admonishments of counsel, interrupt the trial proceedings, and interject himself, uninvited, into the fray. Defendants, however, are trained to be seen but not heard. Court dictates are clear and authoritative; criminal defendants who speak without invitation are not only silenced but threatened with the judicial contempt power. Appellants uncontroverted testimony shows that he was unfamiliar with the procedures now deemed necessary to preserve one's personal right to testify. A silent waiver becomes more pernicious, and less knowing, if the defendant loses his rights without even being aware of the procedures necessary to retain them"

If one simply replaces the right to testify with the valued right to have a trial completed by a tribunal, it becomes clear that I had no idea that silence was considered a waiver of a fundamental constitutional right.

I would argue that Judge Halls actions here clearly favor the prosecution and his quest for a mistrial in this case, affording the prosecution a full opportunity to address the short comings found in the indictment, and a full opportunity to retry the case without restriction, without any consideration for the double jeopardy clause of the constitution and its implications for the accused.

I would also argue ineffective assistance of counsel for many reasons, first that my counsel was biased toward the judges wishes rather than to my cause (I am certain that I was "sold out" during one of the 3 bench conferences) when he abandoned my "valued right" to have my case finished by the first jury to accommodate Judge Halls need to attend his appointment, had counsel objected the court would have been forced to follow the rules set forth in Federal rules of Criminal Procedure 26.3 and give a detailed reason on the record containing sound reasoning for not continuing the case until the following week, confirming that the juror Mr. Maston had been unable to hear the proceedings and that Juror number 8 or 9 was truly unavailable for jury duty the following day. Second for his failure to file a motion to dismiss the charges at the close of states evidence. And finally, failure to file a motion for dismissal on double jeopardy grounds before the second trial (I asked about this motion before the start of the second trial and he told me the matter had to be taken up on appeal)

In this matter I believe, just as my appellate attorney did, the juror disqualifications were merely window dressings needed for the record to assure that this case was never reviewed by any other court. Thus far Judge Halls assumptions have been correct!

Concerning the second trial in this matter. Other than being barred by double jeopardy, and the fact that my defense was greatly prejudiced by the fact that the victim in the matter was obviously stricken with cancer (motion in limine before 2nd trial) which is most likely was the reason my self-defense argument was rejected by the jury. I concede that the proceeding held by Judge Davis was fairly held and I simply lost, had the case occurred first in this matter before Judge Davis I would not be 3 and a half years later still trying to argue this case. I truly believe the jury in the first trial was very likely to acquit me, I knew before the jury in the second trial was impaneled that I was likely to be convicted.

Immediately after my arrest and absence from work the following day for my felony first appearance following the second indictment in this matter after the first trial, I lost my job of 10 years with the NC Department of Transportation, due to my absences from work involving this case. I attempted to address these matters during the first trial by telling the judge that I had been written up at work and needed to get to work, I obviously wanted a resolution to this case in the first trial. Please excuse any errors in this document, I am no attorney, I have spent a great deal of time at the Wilkes Public Library computers trying to make this as legible and clear as possibly.

REASONS FOR GRANTING THE PETITION

Nowhere in the Wake Forrest Law Library or in any Google search have I been able to find a single criminal case in which a judge, in the middle of proceedings with an empaneled jury and half a day's testimony, placed a 5 pm deadline to be finished the same day. This case presents a unique set of circumstances for which the due process and double jeopardy clauses in our constitution may be rendered useless, and the fundamental fairness cornerstone of our legal system may be completely undermined.

Armed with the facts of this case all any prosecutor in North Carolina, with a case of doubtful outcome, need do is schedule the trial for late in the superior court calendar trial week, if the case is proceeding well present it to the jury for verdict. But if his case is not proceeding in his favor all the prosecution need do is limit the defense by continuing to put on evidence and file motions until Friday evening and be granted a mistrial. I have spent many hours learning to read case law for this and the petition I filed with the NC Supreme Court. I respect the decision of the NC court of Appeals, yet I find it very troubling that they didn't address the unfairness of the proceeding which occurred with the unreasonable time limit in place. I truly believe that this case deserves this courts attention, so as to ensure that nothing like this happens to anyone else.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 11/10/18