

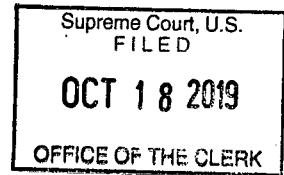
19-6404

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD LEE CURTIS — PETITIONER
(Your Name)



vs.

ERIK A. HOOKS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONALD LEE CURTIS

(Your Name)

NASH CORRECTIONAL

2869 U.S. HWY 64-A

(Address)

NASHVILLE, N.C. 27856

(City, State, Zip Code)

252-459-4455

(Phone Number)

QUESTION(S) PRESENTED

Whether Second-degree Kidnapping and Armed Robbery violate the Constitutional right of double Jeopardy upon Convictions and Punishment for both offenses, especially when the statutory conduct of the kidnapping convictions are based on the statutory conduct associated with the robbery of which defendant was also convicted.

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:

ERICK A. HOOKS

STATE OF NORTH CAROLINA

RELATED CASES

- State of North Carolina v. Donald Lee Curtis, No. COA15-279 N.C. Court of Appeals. Judgment entered March 1, 2016.
- State of North Carolina v. Donald Lee Curtis, No. 122A16 Supreme Court of N.C. Judgment entered December 21, 2016.
- Donald Lee Curtis v. ERIK A. HOOKS, No. 1:17 CV 1101 U.S. District Court for the middle District of North Carolina. Judgment entered March 8, 2019.
- Donald Lee Curtis v. ERIK A. HOOKS, No. 19-6398, U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 23, 2019.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A Decision of The united States Court of Appeals.....	1
APPENDIX B Decision of The united states District Court	4
APPENDIX C Recommendation of united states magistrate Judge	5
APPENDIX D Decision of state Supreme Court.....	16
APPENDIX E opinion of state Court	17
APPENDIX F Constitutional and statutory provisions.....	41
APPENDIX G Indictments.....	44

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
N.C. V. Curtis, 246 N.C. App. 107, 782 S.E.2d 522 (2016)	Pg 4, 9
N.C. V. Curtis, 369 N.C. 316, 794 S.E.2d 501 (2016)	5
Blockburger v. United States, 284 U.S. 299, 301 (1932)	8
N.C. V. McRae, 231 N.C. App 602, 752 S.E.2d 731 (2014)	9
N.C. V. Irwin, 304 N.C. 93, 103, 282 S.E.2d 439, 446 (1981)	10, 11, 12, 13
N.C. V. Ripley, 172 N.C. App 453, 617 S.E.2d 106 (2005)	10
Williams V. Taylor, 529 U.S. 362, 406 (2000)	10
N.C. V. Beatty, 347 N.C. 555, 559, 495 S.E.2d 367, 369 (1998)	11

See attachment for additional Cases

STATUTES AND RULES

North Carolina General Statute § 14-39
Kidnapping

North Carolina General Statute § 14-87
Robbery with a firearm or other dangerous weapons.

28 U.S.C. § 2254 (a)

28 U.S.C. § 2254 (d) (1) (2)

OTHER

AUTHORITIES CITED

Cases	Page number
N.C. v Fulcher, 294 N.C. at 523, 243 S.E.2d 351 (1978).	11
Harris v. Oklahoma, 433 U.S. 682, 97 S.Ct 2912, 53 L.E.2d 2d 1054 (1977).	11
N.C. v. Cartwright, 177 N.C. App 531, 537, 629, S.E.2d 318, 323 (2006).	12
U.S. v Universal C.I.T Credit Corp, 344 U.S. at 221-24 (1952).	13
Hill v. U.S., 368 U.S. 424, 428 (1962)	14

Attachment

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

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A 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 B to 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 D to the petition and is

reported at State v. Curtis, 369 N.C. 310, 794 S.E. 2d 501 (2016); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the North Carolina Court of Appeals court appears at Appendix E to the petition and is

reported at State v. Curtis, 246 N.C. App. 107, 782 S.E. 2d 522 (2016); 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 July 23, 2019.

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 December 21, 2016. A copy of that decision appears at Appendix D.

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

Amendment V.
Double Jeopardy.

North Carolina General Statute
Article 17 G.S. § No. 14-87
Robbery with firearm or other
dangerous weapons.

Article 10 G.S. § NO. 14-39
Kidnapping.

These Pertinent Constitutional and Statutory
provisions are reprinted in the Appendix to this petition.

"Appendix F."

STATEMENT OF THE CASE

On March 12, 2014, Petitioner was convicted by a Jury in the Superior Court of Forsyth County, North Carolina, of two counts of robbery with a dangerous weapon, one count of attempted robbery with a dangerous weapon, two counts of second-degree kidnapping, two counts of assault with a deadly weapon, one count of first-degree burglary, and one count of possession of a firearm by a felon in case 13CRS10929-31 and 13CRS 55189-90. Petitioner then entered a plea agreement regarding his sentence. Under that agreement, his charges were consolidated into three groups, each with a class D felony in the group, and with a prior record level VI. Petitioner was then to be sentenced in the presumptive range for each of the class D felonies, with three sentences to run consecutively. In return, the state agreed not to seek aggravating factors or a firearm enhancement. Based on the agreement, Petitioner received three consecutive sentences of 128 to 166 months of imprisonment. Petitioner pursued a direct appeal, arguing that the trial court was erroneous in failing to dismiss the kidnapping charges where the removal and restraint at issue were inherent in the joined armed robbery charges, but was unsuccessful in that appeal. Petitioner had one dissent. *State v. Curtis*, 246 N.C. App. 107, 782 S.E. 2d 522 (2016). (APP. E.).

Petitioner then appeals to the Supreme Court of North Carolina

The North Carolina Supreme court decided *Percuriam*. Affirmed.
State v. Curtis, 369 N.C. 310, 794 S.E. 2d 501 (2016). (APP. D.)

on December 6, 2017 Petitioner filed a 28 U.S.C. 2254 Habeas Corpus in The United States District Court for the middle district of North Carolina (No. 1:17-cv-01101 CCE-JEP). Raising a single claim for relief, That his Convictions for Second-degree Kidnapping violated his Constitutional right to be free from double Jeopardy. Arguing that The conduct upon which the Kidnapping Convictions were based coincided with the conduct associated with the robberies of which he was also convicted. The 8th day of March 2019 The District Court entered an order and Judgment granting the respondent's Summary Judgment and finding no Substantial issue for appeal concerning the denial of a Constitutional right affecting the conviction. (APP. B.).

Petitioner appealed to the United States Court of Appeals for the Fourth Circuit, on July 23, 2019 The United Court of Appeals for the Fourth Circuit, filed an unpublished *Percuriam* opinion dismissing Petitioners' Appeal, denying motion for a Certificate of appealability, motion to assign Counsel and to proceed in forma pauperis. (APP. A.)

REASONS FOR GRANTING THE PETITION

This Court explained long ago in *Blockburger V. U.S.*, "Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." So if two laws demand proof of the same facts to secure a conviction, they constitute a single offense under our Constitution.

The North Carolina Courts and the United States District Court of North Carolina are in conflict with the relevant decision of this Court, and Petitioner is calling for an exercise of this Court's supervisory power.

The North Carolina State Courts "found specifically that the removal of the victims upstairs was a separate and distinct restraint from the restraint inherent to the armed robberies, and was sufficient to sustain the separate second-degree kidnapping convictions under state law." Also the United States magistrate judge stating that "the kidnapping statute requires only restraint for the purpose of facilitating the commission of a felony or flight from the felony; not the actual commission of the felony. The two crimes have different essential elements and Petitioner's indictments, convictions and sentences do not amount to double jeopardy." (See Recommendation of United States magistrate judge Pg 10 APP. C.), But in fact as explained by the North Carolina Court of Appeals in denying Petitioner's direct appeal, N.C. Gen. Stat. § 14-39, the elements of second-degree kidnapping in North Carolina "are that the defendant: (1) Confined, restrained, or

removed from one place to another, a Person 16 years of age or over, (2) without Consent; (3) for the purpose of facilitating the Commission of a felony or facilitating flight following Commission of a felony; and (4) The victim was released in a safe place and unharmed. (See Pg 10 App. C.). also in Petitioners Indictments, "The Jurors for the State upon Their oath present that on or about the date of offense shown and in the County named above The defendant named above unlawfully willfully and feloniously did kidnap Christopher Cowles a person who has attained the age of 16 years by unlawfully confining the victim, restraining the victim, and removing the victim from one place to another, without the victim's consent, and for the purpose of facilitating the Commission of a felony. The defendant committed the felony alleged in this Count I of this Indictment by using, displaying, or threatening the use or display of a firearm and the defendant did actually possess the firearm about the defendant's person." The element in the indictment, "for the purpose of facilitating the Commission of a felony." and the felony specified in the indictment, "by using displaying, or threatening the use of a firearm and the defendant did actually possess the firearm about the defendant's Person." (APP. G). which is N.C. Gen. Stat § 14-87 Robbery with a firearm or other dangerous weapon. Therefore if Petitioner confined, restrained or removed from one place to another for the purpose of facilitating the Commission of the armed robbery there can be no separate and distinct restraint from the restraint inherent to the armed robbery and is

Contrary to the ruling of the Courts, moreover, without this element you can not convict for kidnapping. See *Blockburger v. United States*, 284 U.S. 299, 301 (1932). "Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."

on page 4 of the Recommendation of the United State magistrate Judge, (See App. C.) Stating "In considering petitioners claim, the Court must apply a highly deferential standard of review in connection with habeas claims adjudicated on merits in state Court proceeding. and the Court may not grant relief unless a state Court decision on merits was contrary to, or involved an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States or was based on an unreasonable determination of the facts in light of the evidence presented in state Court proceeding." Petitioner raises a single claim for relief in his petition of habeas corpus, Asserting that his convictions for second-degree kidnapping violated his Constitutional right to be free from Double Jeopardy the fifth Amendment prohibiting dual prosecution for the same offense, because the statutory conduct of the kidnapping convictions are based on the statutory conduct associated with the robbery of which he was also convicted. 28 U.S.C. § 2254 (a) The Supreme

Court, a Justice there of, a Circuit Judge, or a district Court shall entertain an application of a writ of habeas corpus in behalf of a person in custody in violation of the constitution or law or treaties of the united states. 28 U.S.C. § (d)(1)(z) The merits in state court proceedings were an adjudication that resulted in a decision that was contrary to, and involved an unreasonable application of clearly established federal law as determined by the supreme court of the united states; and resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in state court proceedings.

In the opinion of the honorable Judge Robert N. Hunter, JR Dissenting in state v. Curtis, 782 S.E.2d 522 (2016) (See App. E) "Defendant was indicted for two counts of second-degree kidnapping the first indictment charges him with kidnapping Refugio Pina in connection with the attempted armed robbery of Christopher Cowles, Count I" by using displaying, or threatening the use or display of a firearm and the defendant did actually posses the firearm about the defendant's person." Count II is an assault with a deadly weapon charge alleging defendant struck Collins in the head with a handgun. Count III is an assault with a deadly weapon charge alleging defendant struck Pina in the head with a hand gun. While the attempted armed robbery against Cowles took place in the downstairs of the home, the assault against Collins and Pina took place upstairs. In an indictment charging kidnapping, the state does not have to "set forth... the specific felony that the kidnapping facilitated." State v. McRae, 231 N.C. App 602, 752

S.E. 2d 731 (2014) (citation omitted). Nonetheless, the armed robbery of Cowles, and the assaults on Collins and Pina are contained in the kidnapping indictments and we should examine there factual bases as predicates for the kidnapping charges. As the majority opinion points out, all of the criminal acts took place within Martins home. The majority makes a distinction that the asportation of Pina and Cowles took place when they were moved from the downstairs living room to the up stair bedroom. The majority contends these asportations were separate acts from the attempted robbery against Cowles, which occurred downstairs, and the assault on Collins, which occurred upstairs. In my view, these individual crimes occurred throughout the home and were all part of an over all plan to rob Collins inside the home. I dissent because our precedents holds that all criminal acts that are part of a robbery transaction cannot be so carefully parsed as to create separate kidnapping crimes. See *State v. Irwin*, 304 N.C. 93, 103, 282 S.E. 2d 439, 446 (1981); *State v. Ripley*, 172 N.C. App 453, 617 S.E. 2d 106 (2005) affirmed, 360 N.C. 333, 626 S.E. 2d 289 (2006). To adopt the majoritys view would make the technical asportation defense under the double jeopardy clause incapable of consistent application and render it judicially unmanageable." Clearly Judge Hunters dissent establishes that the state court judgment resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in state court proceeding, and was contrary to, or involved an unreasonable application of clearly established federal law. See *Williams v. Taylor*, 529 U.S. 362, 406 (2000). A state court decision involves an "unreasonable application"

of Supreme Court case law" if the state court identifies the correct governing legal rule for the Supreme Court's case but unreasonably applies it to the facts of the particular state prisoner's case."

The state court identified the correct governing legal rule but unreasonably applies it to the facts of the particular state prisoner's case. (See APP. E. pg 6.) To avoid Constitutional concerns of the fifth Amendment (Double Jeopardy) the Supreme Court interpreted the kidnapping statute so that "The 'restraint', which constitutes the kidnapping must be a separate complete act, independent of and apart from the other felony." See *State v. Beatty*, 347 N.C. 555, 559, 495 S.E. 2d 367, 369 (1998) ("A person cannot be convicted of kidnapping when the only evidence of restraint is that which is an inherent, inevitable feature of another felony such as armed robbery.") quoting *Fulcher*, 294 N.C. at 523, 243 S.E. 2d 351 (1978). The Supreme Court subsequently applied the same reasoning to the removal element of the kidnapping, holding that "The phrase 'removal' from one place to another requires a removal separate and apart from that which is an inherent, inevitable part of the commission of another felony." See *State v. Irwin*, 304 N.C. 93, 103, 282 S.E. 2d 439, 446 (1981). To permit separate and additional punishment where there has been only a technical asportation, inherent in the other offense perpetrated, would violate petitioners Constitutional protection against double Jeopardy. See *Harris v. Oklahoma*, 433 U.S. 682, 97 S.Ct 2912, 53 L.E.d 2d 1054 (1977).

(See APP. C. Pg 7 Recommendation of U.S. magistrate Judge.)

"The Court went on to explain that Petitioner and his associates robbed or attempted to rob Cowles and Pina in the living room. By the time they moved Cowles and Pina from upstairs, any robbery of those men was complete and the movement of Cowles and Pina from downstairs to upstairs was not integral to the robberies." Petitioner and his accomplices were armed when they entered Martins home. Immediately after entering, one of them demanded the cellphones from Cowles and Pina, the robbery began when this demand was made. See State v. Cartwright, 177 N.C. App. 531, 537, 629 S.E.2d 318, 323 (2006). ("Armed Robbery began when defendant showed the knife to the victim in the kitchen and demanded money.") After Petitioner and his accomplices demand for the cell phones, they ask where Collins was, with lack of knowledge of the location of Collins in the house Cowles said "upstairs sleeping", Cowles and Pina then show them where he was located and where the primary stolen property - Collins \$ 2,000 - was located. See State v. Irwin, 304. N.C. 93, 103, 282 S.E.2d 439, 446 (1981). ("moving victims to the area where the stolen property was located is integral to the robbery's rather than independant removal.") also The majority found in the opinion of the North Carolina Court of appeals, APP. E Pg 16.) "The robbers, or attempted robberies, of Cowles and Pina took place entirely downstairs when the robbers demanded Cowles and Pina's cellphones." Although Petitioner and his accomplices did not try to take anything else from Cowles besides his phone, they did take Pina's guitar after all

of the occupants were upstairs, the majority noted that the jury found petitioner not guilty of the armed robbery charge of Pina, but that is immaterial, what matters for this analysis is that petitioner was indicted for armed robbery of Pina, specifically for taking his guitar. See State v. Irwin, 304 N.C. 93, 103, 282 S.E. 2d 439, 446 (1981) (concluding that kidnapping conviction had to be reversed because removal was integral to attempted armed robberies for which the defendant was indicted.)

the North Carolina Court of Appeals majority opinion, App. E, affirmed per curiam by the North Carolina Supreme Court, App. D, and the United States District Court for the Middle District of North Carolina. Recommendation of the United States Magistrate Judge, App. C, Dismissed by unpublished per curiam opinion by the United States Court of Appeals for the Fourth Circuit, that the removal and restraint were separate, complete acts, independent of and apart from that which was inherent and inevitable part of the robbery with a dangerous weapon and attempted robbery with a dangerous weapon, are in conflict with decisions of their own courts and the United States Supreme Court, and has error in all of its rulings, none of the reasons stand up to scrutiny, and result in a decision contrary to and involve an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States. See United States v. Universal C.I.T. Credit Corp., 344 U.S. at 221-24. (1952). If the offense is a course of conduct, the trial court should treat as one offense all violations that arise from that singleness of

Thought, purpose, or action that may be deemed a single impulse.

"Relief for state violations of federal statute will be granted only if the violation rises to the level of a "fundamental defect which inherently results in a complete miscarriage of justice" or is inconsistent with the rudimentary demands of fair procedure." quoting *Hill v. U.S.* 368 U.S. 424, 428 (1962), the Petitioner could not in his research find any decision from this Court that resolves the question at hand, and believes that the convictions of kidnapping and armed robbery put him on sound constitutional grounds, the issue presented is an unresolved question that can affect everyone who has a conviction of kidnapping that was obtained by a conviction of armed robbery throughout the U.S. whether state or federal and therefore should be a matter to resolve in the interest of justice. This Courts intervention is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald Lee Curtis.
Donald Lee Curtis

Date: October 18, 2019.