

No. 19-

IN THE
Supreme Court of the United States

ASHLEY R. HAMBRIGHT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioner, ASHLEY R. HAMBRIGHT, appealed her twelve months of supervised probation for driving while intoxicated (“DWI”) on the grounds of a military joint base. (Exhibit A, page 1). The sentence followed a bench trial before a United States Magistrate Judge. (Exhibit A, page 1). On direct appeal, Ms. Hambright argued the Court failed to apply well established Texas law on the elements of a DWI offense and used prejudicial facts which were irrelevant on the issue of sufficiency of the evidence. The United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”) disagreed and affirmed the conviction. (Exhibit A, page 1).

Respectfully, the decision of the Fifth Circuit decided important federal questions in a way that conflicts with relevant decisions of this Court. Specifically, in a manner which is contrary to the stare decisis of this Court, the Fifth Circuit relied on an incorrect statement of the law on causation to establish intoxication on a DWI charge and failed to evaluate the Magistrate Judge’s reason for finding intoxication. Thus, a compelling reason is presented in support of discretionary review by this Honorable Court.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption:

Ashley R. Hambright:	Petitioner (Defendant-Appellant in the lower Courts)
United States of America:	Respondent (Plaintiff-Appellee in the lower Courts)

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
CITATIONS TO OPINIONS AND RELEVANT ORDERS.....	1
GROUND FOR JURISDICTION.....	1-2
CONSTITUTIONAL PROVISIONS.....	2
STATEMENT OF THE CASE.....	2-7
ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.....	7-11
CONCLUSION.....	11-12

INDEX TO APPENDIX

APPENDIX A	Decision of the United States Court of Appeals for the Fifth Circuit denying relief on direct appeal.
APPENDIX B	Judgment in a Criminal Case issued by the United States District Court for the Western District of Texas, San Antonio Division.

TABLE OF AUTHORITIES

CASES:

<i>Anderson v. City of Bessemer City</i> , 470 U.S. 564, 573-74 (1985).....	9-11
<i>Mid-Continental Cas. Co. v. Davis</i> , 683 F.3d 651, 654 (5th Cir. 2012).....	9
<i>Nix v. Whiteside</i> , 475 U.S. 157, 171 (1986).....	8
<i>Rock v. Arkansas</i> , 483 U.S. 44, 52 (1987).....	8

CONSTITUTIONAL PROVISION:

U.S. CONST. amend V.....	2
U.S. CONST. amend VI.....	2

STATUTES:

18 U.S.C. § 13.....	2
28 U.S.C. § 1254.....	1
TEX. PENAL CODE § 49.04.....	2

PETITION FOR WRIT OF CERTIORARI

Petitioner, ASHLEY R. HAMBRIGHT , requests this Court grant this Petition and issue a Writ of Certiorari to review the decision of the Fifth Circuit. Ms. Hambright respectfully submits the Magistrate Judge committed reversible error by finding Ms. Hambright guilty of DWI based on erroneous legal and factual reasons. Hence, the Fifth Circuit did not apply the correct law to the facts of this case. (Appendix A, pages 1-3). Therefore, the verdict is in violation of Ms. Hambright's constitutional right to due process of law and, accordingly, must be vacated and this matter reversed and remanded for a new trial or acquittal.

REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

From the Federal Courts:

The Order of the United States Court of Appeals for the Fifth Circuit, *United States v. Ashley R. Hambright*, No. 18-51080 (5th Cir. Dec. 9, 2019), appears at Appendix A to this petition and is reported at 944 F.3d 565 (5th Cir. 2019).

The Judgment in a Criminal Case of the United States District Court for the Western District of Texas, San Antonio Division, appears at Appendix B to this petition and is unreported.

From the State Courts:

None.

GROUND FOR JURISDICTION

This Petition arises from a direct appeal which granted final and full judgment against Ms. Hambright following a bench trial. This action is on a criminal prosecution initiated by the Government. A copy of the Judgment appears at Appendix B. Ms. Hambright argued to the Fifth Circuit there was reversible error because the Magistrate

Judge did not correctly apply the facts to Fifth Circuit law and considered irrelevant conclusions in evaluating the evidence. The Fifth Circuit rejected this argument in a published opinion dated December 9, 2019, and affirmed the decision of the Magistrate Judge. A copy of the decision appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

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 offence 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 witnesses against him; to have compulsory process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Overview

Ms. Hambright pleaded not guilty to an Information which charged her with the offense of driving while intoxicated within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. § 13 (involving TEX. PENAL CODE § 49.04). She

proceeded to a bench trial before the Honorable Elizabeth S. Chestney, United States Magistrate Judge for the Western District of Texas, San Antonio Division. ROA.70. After the evidence was presented, the Magistrate Judge discussed her findings and legal conclusions for finding Ms. Hambright guilty. ROA.303-16.

The Evidence at Trial

At the time of the incidents in question, Ms. Hambright was a twenty-seven-year-old mother going through a divorce. ROA.255-56. She was working at “office administration, valet, and waitressing” to support her son and show she was a capable mother. ROA.256. On the night she was arrested for the offense driving while intoxicated, Ms. Hambright was at her home in Helotes, Texas. ROA.256. Sometime after 11 p.m., Ms. Hambright took two Benadryl, an over-the-counter allergy medication. ROA.258, 274. Ms. Hambright was truthful that she had never taken Benadryl and gotten behind the wheel of a vehicle. ROA.260. However, she had taken Benadryl on previous occasions and therefore she believed she had control of her mental and physical faculties and that she could drive that night. ROA.260-61. Therefore, when she received a telephone call from her employer telling her that he wanted to see her, Ms. Hambright drove to an establishment known as Sparky’s. ROA.261-62.

Ms. Hambright waited at Sparky’s to talk with her boss until the establishment closed. ROA.262. She never drank any alcohol. ROA.262-63 Ms. Hambright was still not able to see her employer and thus left Sparky’s, which is in downtown San Antonio, and headed for home. ROA.262. However, it was nighttime, Ms. Hambright was not familiar with

the area, and she became lost. ROA.262-63. Indeed, she remembered that she was so confused she looped through the same area three times. ROA.263-65.

Ms. Hambright's driving finally brought her to a stop where she hoped she could use GPS to find her way home. ROA.265. It was there, at a turn around entrance area to Fort Sam Houston, the police approached her car. ROA.266.

At trial, the Government called an officer who worked at the Fort Sam Houston gate, and two military police officers who handled the interviews, to testify about the arrest of Ms. Hambright. ROA.78-238. The officer who was working at the gate when Ms. Hambright drove up to the base was the first to testify. ROA.80. She testified as to how Ms. Hambright repeatedly drove up to the gate and looped in and out of the entry area. 81-85. The officer stated that she called for a patrol vehicle to come to the entrance. ROA.84-86. However, despite the fact that Ms. Hambright drove-off the base property and into the jurisdiction of the San Antonio Police Department ("SAPD"), no one on base ever contacted the SAPD for assistance. ROA.97-99, 105-07.

As it would be a reoccurring theme in this case, this officer testified that, despite the alleged high level of due diligence at the entrance to Fort Sam Houston that night, there were no cameras at this location or even any pictures taken and no hand held recordings were made. In fact, the cameras which are on base do not have the range to record anyone or anything approaching the gate. ROA.117. Furthermore, despite the fact that they were readily available, hand held cameras were not used to record the driving facts, field sobriety tests, or Ms. Hambright's arrest. ROA.118.

The next witness to testify was a military police officer who arrived at the scene in response to the gate officer's call. ROA.124-26. The issue of recording an arrest was also discussed with this witness. He admitted the patrol cars have video equipment but said the military police were not using them at that time due to "issues" with the equipment and recordings. ROA.128-29.

This witness also stated that cameras were not helpful to video an area because he is "more of the proactive and not a reactive" meaning that he would "rather have people doing it than the cameras doing it." ROA.217. He explained that, "[t]he more cameras you have in place the more people you're going to have to have staring at a screen[,] whereas if you put a person in place, they'd be able to take action right then and there." ROA.217. When defense counsel asked the officer: "It doesn't bother you that there's not a camera on something where somebody's doing DWI tests and answers all the questions?," the Magistrate Judge sustained the Government's objection because "it's irrelevant to any issue I have to decide." ROA.217.

This is the officer who claimed based on his sobriety field testing that Ms. Hambright was intoxicated. ROA.124-29. Ms. Hambright refused to take a breath test and the officer did not seek a court order for blood. ROA.174.

On cross-examination, the following facts were developed:

- * the officer failed to obtain an order to draw blood even though such a court-order was available, ROA.180;
- * video is inexpensive today and available, ROA.181, but it was not the policy of the military police to use it, ROA.182;

- * the field sobriety tests only provide a possibility of intoxication, ROA.184;
- * there have been times when the officer performed all the sobriety tests and then the breath test nonetheless establishes the suspect is not intoxicated, ROA.184; and
- * Benadryl does not make some people intoxicated, ROA.190.

The officer also claimed he had made 348 DWI arrests in 2017. ROA.193.

The Government's final witness was one of the arresting officers. ROA.221-42. Her testimony was similar to that of the officer who performed the field sobriety tests. ROA.221-42.

Summary of Ms. Hambright's Testimony

Ms. Hambright testified the following facts were true and correct:

- * she took Benadryl for relief from allergy and asthma symptoms;
- * she had taken Benadryl before but never driven;
- * she did not feel intoxicated after taking Benadryl on the night in question;
- * she headed out in her car shortly after 11 p.m. to meet her employer at an establishment in downtown San Antonio;
- * she did not drink alcohol at the designated meeting place of business;
- * her boss never arrived, so she began driving home when the establishment closed;
- * she got confused and lost at Fort Sam Houston, so she looped back to the entrance gate of the compound as she attempted to exit;
- * a guard at the gate called the Military Police;
- * an officer performed field sobriety tests on Ms. Hambright while another officer watched;

- * none of the events on question were recorded either because there were no cameras or because the police chose not to use the recording devices; and
- * she was arrested and charged with the offense of driving while intoxicated.

ROA.255-66.

After the evidence was closed, the Magistrate Judge found Ms. Hambright guilty and made several findings and conclusions of law. These are relevant to the legal issues and are discussed below.

Appellate Proceedings in the Courts Below

Ms. Hambright filed a notice of appeal to the District Court. ROA.373-74, 5-6. The District Court ordered the parties to file briefs with the Court. ROA.8-9. The District Court issued an opinion and judgment affirming the conviction. ROA.52-67. Ms. Hambright timely filed a notice of appeal to the Fifth Circuit. ROA.68-69. She argued the application of incorrect legal standards of review—including her decision to testify and the failure to require the Government to prove all elements of the offense—resulted in an abuse of discretion which harmed Ms. Hambright to the point of reversible error. The Fifth Circuit ordered further briefing and affirmed the Magistrate Judge. (Appendix A, pages 1-3). Ms. Hambright now timely files this Petition with this Court.

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.

An Irrelevant and Prejudicial Conclusion by the Magistrate Judge

During the discussion between defense counsel and the Magistrate Judge during closing argument, the Magistrate Judge concluded: “But it seemed like you [referring to

defense counsel] were eliciting that [Benadryl] testimony to convince me that that's the reason that she perhaps didn't perform as well on her [field sobriety] tests." ROA.239. Counsel responded he can only elicit honest responses from his client. ROA.239.

This statement by the Court formed the crucial basis for the Court's legal conclusion that Ms. Hambright was guilty. *See* ROA.239. However, the emphasis on this conclusion establishes the Court's legal basis for its ruling is flawed. Indeed, the Court's ruling is contrary to two cornerstones of criminal jurisprudence.

It is beyond dispute that the accused in a criminal case is the person who will determine if he or she testifies. "An accused's right to present his own version of events in his own words is even more fundamental to a personal defense than the right of self representation." *Rock v. Arkansas*, 483 U.S. 44, 52 (1987). Therefore, the Magistrate Judge's assertion that in some way counsel "directed" Ms. Hambright to testify is without merit.

The Court's reasoning is also contrary to the well established rule of law that counsel cannot be a party to his client's perjury. As the Supreme Court of the United States has explained, "a lawyer must believe his client not judge him." *Nix v. Whiteside*, 475 U.S. 157, 171 (1986). A lawyer cannot "honorably be a party to or in any way give aid to presenting known perjury." *Id.* Indeed, Ms. Hambright never wanted to cover up the fact that she took Benadryl and counsel did not ever encourage her to do so. Her statement was simply her truth that she took this over-the-counter medication but that it did not cause her to lose her

mental or physical capabilities. Respectfully, the Magistrate Judge's emphasis on why counsel elicited specific testimony is irrelevant to any issue in this case.

The Fifth Circuit did not address this argument. Instead, the Fifth Circuit construed this assertion in the following fashion:

During the trial, Hambright testified that she had taken Benadryl the night of her arrest, but she affirmed that she did not feel intoxicated. She also testified that she had not ingested any other substance that caused her to feel intoxicated. She argues that the magistrate judge improperly discredited her testimony, relying instead on the testimony of a base law enforcement officer who explained that he smelled alcohol on Hambright's breath and that Hambright exhibited behavior consistent with intoxication. Despite Hambright's assertions to the contrary, the magistrate judge was not required to credit her testimony, and his decision to credit the officer's version of the events over hers was not clearly erroneous. *See, e.g., Mid-Continental Cas. Co. v. Davis*, 683 F.3d 651, 654 (5th Cir. 2012) ("[W]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." (quoting *Anderson v. city of Bessemer City*, 470 U.S. 564, 573-74 (1985))). Hambright's additional argument that the magistrate judge improperly considered her reasons for testifying are likewise unsupported by the record.

(Appendix A, page 2). Respectfully, as the above discussion establishes, this was not Ms. Hambright's argument on the Magistrate Judge's use of her opinion on an alleged reason for illiciting the truth from his client. The Magistrate Judge's opinion on this issue was an important reason for her finding of guilty. Because the Fifth Circuit did not address this issue, Ms. Hambright requests that this Court evaluate this claim in full.

II.

Two "Permissible" Views

While Ms. Hambright has asserted the Fifth Circuit did not address the main issue, the Fifth Circuit's construction of her argument on the Magistrate Judge's choice of what

she considered in her verdict is also without merit. The Fifth Circuit cited this Court's well established rule of law that "where there are two permissible views of the evidence, the factfinder's choice between cannot be clearly erroneous." (Appendix A, page 2) (quoting *Anderson*, 470 U.S. at 573-74). Ms. Hambright has never challenged this rule of law. Rather, she respectfully submits to this Court that this is not what the Magistrate Judge did in this case.

The Fifth Circuit opined that the Magistrate Judge simply credited the officer's testimony over Ms. Hambright's testimony. (Appendix A, page 2). Such an observation would mean under *Anderson* her reasoning would be sound. However, that is not the evidence in this case. The Magistrate Judge's concern on the issue of sufficiency was limited to why counsel "illicit" the truth from Ms. Hambright, *i.e.*, that she had taken Benadryl prior to the incident in question. In this regard, the Fifth Circuit's holding is contrary to the mandate in *Anderson*, and therefore this Petition should be granted and this matter proceed to further review.

III.

The Magistrate Judge's Declaration of Relevancy on Causation

On the issue of causation, the Fifth Circuit stated:

Though the Magistrate Judge observed that the specific identity of the intoxicant was not relevant to Hambright's guilty, the magistrate judge did not relieve the Government of its burden of demonstrating causation under the statute.

(Appendix A, page 2). Respectfully, this was not the Magistrate Judge's ruling.

Instead, the Magistrate Judge said “it’s irrelevant as to how Ms. Hambright came to lose her mental or physical capabilities.” ROA.236-37. According to the Magistrate Judge, “what led Ms. Hambright to that state is not one of the elements of the offense.” ROA.237. Indeed, the Magistrate Judge said, “it could have been marijuana,” even though no one mentioned marijuana. ROA.237 (emphasis added). In other words, the Magistrate Judge convicted Ms. Hambright because it was the Court’s belief that Ms. Hambright had lost her mental and physical capabilities regardless of the reason why. *See* ROA.237-38. Stated another way, it was enough to convict Ms. Hambright because she was lost, confused, tired, had bloodshot eyes, and could not find her way home. According to the Magistrate Judge, this was enough to convict Ms. Hambright because, as the Magistrate Judge stated, how she got to that state was irrelevant. ROA.237. Indeed, the Magistrate Judge was going to convict Ms. Hambright even if there was no evidence her condition was the result of a substance. *See* ROA.237.

Accordingly, the Fifth Circuit’s conclusion that there was a finding of causation by the Magistrate Judge is contrary to the Magistrate Judge’s comments for her ruling. Therefore, this Petition should be granted because the Magistrate Judge did not base her legal conclusion on a “permissible” view of evidence as required by this Court in *Anderson*, 470 U.S. at 573-74.


CONCLUSION

Respectfully, the opinion of the Fifth Circuit did not follow the dictates of *Anderson*, 470 U.S. at 573-74, as to the sufficiency of the evidence. The decision therefore mandates

the use of the discretionary authority of this Court to grant this Petition. Accordingly, Ms. Hambright submits, on the important issue of federal concerns, compelling reasons are presented in support of discretionary review.

WHEREFORE, PREMISES CONSIDERED, Petitioner herein respectfully requests that this Honorable Court grant this petition and issue a Writ of Certiorari and review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed the sentence imposed by the District Court. Ms. Hambright also respectfully requests any further relief to which she may be entitled under the law and in equity.

Respectfully Submitted,



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