

No. 21-_____

IN THE
Supreme Court of the United
States

RICHARD L. STARGHILL, II,
Petitioner,
V.

UNITED STATES OF AMERICA.,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the
Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Do multiple mistrials, necessitated by jury misconduct, create a Double Jeopardy bar, preventing a retrial of a criminal defendant?

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PETITION FOR A WRIT OF CERTORARI

Richard L. Starghill II, an inmate currently incarcerated by the United States Bureau of Prisons, by and through undersigned counsel, appointed pursuant to the Criminal Justice Act, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is not published in the Federal Reporter, but is available at 2021 WL 3140316. The opinion of the District Court is not published, but is available at 2020 WL 592326.

JURISDICTION

The judgment of the Court of Appeals was entered on July 26, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

“nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend V.

STATEMENT OF THE CASE

The matter was brought for jury trial before the United States District Court for the Eastern District of Kentucky on November 4-5, 2019. On November 4, the United States and the Defendant both presented witnesses, gave closing arguments, and the matter was submitted to the jury.

After retiring for deliberations, the jury began sending several notes to the Court regarding their deliberations. The jury then indicated to the Court that it had reached a verdict, after approximately two hours of deliberations. Upon entering the courtroom and being asked by the Court whether the jury had reached a unanimous verdict, the foreperson responded “No, ma’am.” In direct contravention of the orders of the Court, the jury had included information regarding where they stood on votes for conviction or acquittal. This information was not shared with the parties, and was placed under seal. The Court then gave an *Allen* charge to the jury, instructing them to continue deliberations. *See Allen v. United States*, 164 U.S. 492 (1896).

Approximately an hour later, the jury sent another note to the Court, which again set forth their votes. Out of necessity, based on the jury’s repeated direct violations of the Court’s instructions, and concerns about a second *Allen* charge, the Defendant was compelled to request a mistrial. The Court expressed concerns about the repeated violation of the instructions,

but ultimately denied the motion without prejudice. At their request, the jury was released to return the next morning.

On November 5, the jury reassembled, and began deliberations. Quickly, additional notes were sent out regarding witness testimony, as well as a note indicating that a juror had consulted outside information. The motion for a mistrial was renewed, based on the outside information being discussed in jury deliberations. Based on all the information provided, the Court found that the jury was deadlocked, and the Defendant's renewed oral motion for a mistrial was granted.

Approximately six (6) weeks later, a second trial occurred. After completion of *voir dire*, it was brought to the Court's attention by a court security officer that a juror was making inappropriate comments in the jury room regarding the Defendant's criminal history. The Defendant had entered into a stipulation regarding his criminal history to avoid the specifics being raised in trial.

In order to determine exactly what occurred, several prospective jurors were called to the bench and questioned regarding what had been said in the jury assembly room. Juror 134, who had conducted the internet search, denied that he had looked up anything regarding the Defendant's criminal history. Upon questioning several jurors, it became clear that juror 134 had looked up extraneous information on the case,

and lied to the court. Following the questioning of several jurors, Juror 107 then told the court that an additional juror had stated “if somebody refused to get up and take the witness stand in their defense, [the juror] automatically assume they’re guilty.” Following the revelations of clear tainting of the jury pool due to misconduct, as well as negative statements regarding the Defendant’s right not to take the stand, the Defendant was required to move for mistrial.

Following a denial of the Defendant’s motion to dismiss, based on a Double Jeopardy violation, the Defendant was brought to trial for a third time, and was convicted. The Defendant was sentenced to 240 months of imprisonment.

REASONS FOR GRANTING THE PETITION

Both the District Court and Court of Appeals erred by failing to determine that a violation of the Double Jeopardy Clause occurred.

I. Prior Supreme Court precedent prevented a finding that jury misconduct, unrelated to prosecutorial actions, can create a Double Jeopardy bar

Both the District Court and the Court of Appeals relied upon *United States v. Dinitz*, 424 U.S. 600 (1976) and *Oregon v. Kennedy*, 456 U.S. 667 (1982) for

the propositions that jury misconduct, unrelated to actions by the prosecutor or judge, could not form the basis for a Double Jeopardy bar.

These extremely narrow readings of Supreme Court precedent, particularly the “manifest necessity” standard, are too common, and have been interpreted in such a manner as to create a categorical bar to relief. *See e.g. United States v. Colvin*, 138 F. App’x 816, 820 (6th Cir. 2005); *United States v. Huang*, 960 F.2d 1128 (2d Cir. 1992). Only a revisiting of the *Dinitz* and *Kennedy* line of cases can prevent this overly broad application of these cases.

II. Multiple mistrials caused by jury misconduct create similar hardships and risks to criminal defendants as mistrials caused by prosecutorial misconduct.

The Fifth Amendment provides that “nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend V. This Honorable Court has explained part of the rationale behind this important constitutional protection as follows:

The State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby 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.

Green v. United States, 355 U.S.184, 187 (1957). This Court has expressed recognized that prosecutorial or judicial misconduct can be grounds for establishing a Double Jeopardy bar to retrial. *United States v. Jorn*, 400 U.S. 470 (1971); *United States v. Dinitz*, 424 U.S. 600 (1976); *Oregon v. Kennedy*, 456 U.S. 667 (1982). Juror misconduct, while different in some respects from prosecutorial or judicial misconduct, should not be interpreted in such a manner as to categorically fall outside the scope of the Fifth Amendment.

In the present case, jurors engaged in repeated, outrageous conduct, which had the effect of undermining the trials in the first two instances. Needless to say, the jury conduct was of such a nature that the Defendant felt compelled to seek mistrials and dismissal of the case.

Where the Defendant has been required to move for mistrials based on such conduct by multiple juries, Double Jeopardy should bar retrial. Juries are an instrumental part of our system of justice. In the exceptional circumstances presented in a case such as the one *sub judice*, juries that have committed clear misconduct, which reflects that they are unfit to reach a final verdict, should not be considered off limits for establishing a Double Jeopardy bar. The current case law has provided a system whereby criminal defendants are faced with the following choice:

- (1) Move for a mistrial due to clear and curable misconduct, and forfeit the right to raise Double Jeopardy concerns; or,
- (2) Permit a facially unfit jury to deliberate and reach a verdict, and hope that some form of post-conviction relief, including ineffective assistance of counsel, can result in the setting aside of the verdict.

The Defendant would posit that the Double Jeopardy Clause presents a third, and more reasonable option, namely, a Double Jeopardy bar to repeated mistrials in instances of jury misconduct. Trial courts should be able to analyze jury misconduct within a framework that allows a Double Jeopardy bar, rather than a categorical prohibition against such a finding.

Criminal defendants and their counsel must undergo identical usages of time, expenses and resources, including extended pre-trial incarceration for many defendants, regardless of what the cause of the mistrial may be. This Honorable Court should issue a writ of certiorari to address this issue of vital importance to criminal defendants nationwide.

CONCLUSION

For the foregoing reasons, Mr. Starghill respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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