

23-5366

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUN 14 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RICKY ALAN DEEPHOUSE -PETITIONER

vs.

THE STATE OF WYOMING, THE SUPREME COURT OF WYOMING-RESPONDENT(S)

**ON PETITION FOR A WRIT OF CERTIORARI TO
IN THE SUPREME COURT, STATE OF WYOMING**

PETITION FOR WRIT OF CERTIORARI

**RICKY ALAN DEEPHOUSE
ID #34164
40 HONOR FARM RD
WYOMING HONOR FARM
RIVERTON, WYOMING 82501**

QUESTION(S) PRESENTED

1. DID THE STATE SUPREME COURT IN THIS MATTER ABUSE ITS POWER?
2. DID THE STATE SUPREME COURT IN THIS MATTER MISUSE ITS POWER?
3. DID THE STATE SUPREME COURT IN THIS MATTER FAIL TO FOLLOW THE RULE OF LAW?
4. DID THE STATE SUPREME COURT IN THIS MATTER ENTER A VALID AFFIRMING OF SENTENCE AND CONVICTION BY ONLY ONE JUSTICE FORMING AN OPIONON?
5. DID THE STATE SUPREME COURT IN THIS MATTER ILLEGAL ISSUE AN OPIONON BY SAYING IT WAS BEFORE CHIEF JUSTICE FOX, JUSTICE C.J., AND KAUTZ, BOOMGAARDEN, GRAY AND FENN, J.J. BUT THE ONLY INFORMATION PROVIDED WAS BY CHIEF JUSTICE FOX?
6. DID THE STATE SUPREME COURT IN THIS MATTER FAIL TO FOLLOW THE RULE OF LAW BASE ON OFF OF QUESTIONS 1-6?

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 in 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:

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 state courts:

The opinion of the Highest States court to review the merits appears at
ATTACHMENT to the petition.

JURISDICTION

[X] For cases from state courts:

The date on which the highest state court decided my case was APRIL 25, 2023
A copy of that decision appears at ATTACHED TO FILING

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Ricky Alan Deephouse, Petitioner Prose, moves this court to answer the questions above as matter of law both under the state statute of Wyoming and federal laws. The petitioner in this matter was convicted and sentenced in this matter by a Wyoming State District Court jury even though he was found not guilty on count II and guilty of count I which the charges were the same charges. The state had no evidence in this matter other than hearsay which in Wyoming hearsay is allowed according to the law to extend however under The Wyoming Rules of Evidence generally apply to disciplinary hearings. Wyo. R. Evid. 15(b).

Hearsay statements are generally inadmissible because they are made outside of court and, therefore, presumed to be unreliable. Wyo. R. Evid. 802. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Wyo. R. Evid. 801(c). Written notes prepared by a former legal assistant or employee constitute hearsay and cannot be received into evidence unless the notes fall within a recognized exception to the hearsay rule.

"Hearsay" is defined as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Wyo. R. Evid. 801(c). Hearsay statements are generally inadmissible because they are made outside of court and, therefore, presumed to be unreliable. Wyo. R. Evid. 802.

Rule 802. Hearsay Rule. Hearsay is not admissible except as provided by these rules or by other rules adopted by the Supreme Court of Wyoming or by statute. **Committee note.**

A statute superseded by Rule 1102 W.R.E. is not a statute referred to by this rule.

Hearsay is generally inadmissible because it is thought to be unreliable and untrustworthy and because there is no opportunity to confront the witness or cross-examine. *Kelly v. State*, 694 P.2d 126, 1985 Wyo. LEXIS 439 (Wyo. 1985). **Harmless error.** Because an employer was permitted to introduce exhibits documenting complaints from others concerning an employee who was fired, and the employer called five witnesses to testify concerning their experiences in working with the employee, any error that occurred in the trial courts refusal to allow certain similar proposed testimony on hearsay grounds was harmless. *Life Care Ctrs. of Am., Inc. v. Dexter*, 2003 WY 38, 65 P.3d 385, 2003 Wyo. LEXIS 45 (Wyo. 2003).

Admission not prejudicial. In a prosecution of defendant for second-degree sexual assault of his daughter, even though testimony of the mother of the victim as to the victims disclosures about her fathers abuse was not given for purposes of rebuttal as originally represented by the state, the error in admitting it was de minimis and not prejudicial. *Humphrey v. State*, 962 P.2d 866, 1998 Wyo. LEXIS 88 (Wyo. 1998), reh'g denied, cert. denied, 1998 Wyo. LEXIS 100 (Wyo. July 14, 1998).**State of mind.** At murder trial, testimony of victims sister concerning a conversation between the sister and victim, in which the victim told his sister about missing money from a checking account, was properly admitted to show the victims state of mind before his death. *Humphrey v. State*, 2008 WY 67, 185 P.3d 1236, 2008 Wyo. LEXIS 69 (Wyo. 2008). Hearsay recording of a conversation between a confidential informant and defendants mother was not admissible because the prosecution did not seek its admission to show the mothers state of mind. the prosecution fully intended that the evidence be viewed by the jury as substantive evidence of defendants delivery of illegal drugs. *Majors v. State*, 2011 WY 63, 252 P.3d 435, 2011 Wyo. LEXIS 65 (Wyo. 2011).**Court cannot infer truth of nonhearsay assertion.** When evidence is received for a purpose other than the truth of the matter asserted, a court cannot infer and accept the truth of the assertion without running afoul of the hearsay rule and disavowing the limited purpose for which that evidence was received. *Longstreth v. State*, 832 P.2d 560, 1992 Wyo. LEXIS 68 (Wyo. 1992), reh'g denied, 1992 Wyo. LEXIS 78 (Wyo. June 24, 1992).**Rule not applicable to sentencing information.** This rule has reference to evidence presented at trial or hearing, and not to information useful to the court in sentencing. *Johnson v. State*, 790 P.2d 231, 1990 Wyo. LEXIS 30 (Wyo. 1990).**Basis of expert testimony.** Testimony by the states psychiatrist regarding statements by a sexual assault defendants sister that the defendant had sexually abused her many years before the assault for which he was being charged was admissible where offered to demonstrate the basis upon which the psychiatrist relied in concluding the defendants criminal conduct was not attributable to a post-traumatic stress disorder, and where a limiting instruction was given to the jury that it could not rely on the testimony as proof of the truth of the matter asserted or of the defendants character. *McGinn v. State*, 928 P.2d 1157, 1996 Wyo. LEXIS 166 (Wyo. 1996).

Witnesses improperly vouched for credibility of alleged victim. Where the trial court, in a case in which the defendant was convicted of sexual assault, had ordered that witnesses not be asked to vouch for the credibility of the child who was the alleged victim, and where the prosecutor continued to do so despite admonitions and sustained objections, the witness' statements were hearsay, were not admissible, and resulted in reversible error. *Wilde v. State*, 2003 WY 93, 74 P.3d 699, 2003 Wyo. LEXIS 114 (Wyo. 2003). **Testimony properly admitted under excited utterance exception.** During defendant's trial for attempted murder, the court did not err in allowing the testimony of a police officer regarding the victim's behavior and appearance under the excited utterance exception to the hearsay rule because the victim was the recipient of a savage beating that took place over a period of hours; little question existed that the beating was a shocking and startling event. *Sanchez v. State*, 2011 WY 77, 253 P.3d 136, 2011 Wyo. LEXIS 79 (Wyo. 2011). **Law reviews.** For case note, *The Confrontation Clause and the Catch-all Exception to the Hearsay Doctrine*, *Hopkinson v. State*, 632 P.2d 79 (Wyo. 1981), see *XVII Land & Water L. Rev.* 703 (1982).

RICKY ALAN DEEPHOUSE, Petitioner in this matter submits that the above cited statutes and case laws apply to the matter herein on issue of hearsay as the you the highest court in the land will be able to see that there is no true evidence infact there was no crime committed.

But "appeal" from such order considered as petition for writ of certiorari - The defendant's "notice of appeal," seeking review of a district court order denying his motion to dismiss on the ground that a retrial placed him in double jeopardy, not being a "final order," was considered as a petition for a writ of certiorari. *Stamper v. State*, 701 P.2d 557 (Wyo. 1985).

Double jeopardy clause has same meaning as Fifth Amendment. While the respective double jeopardy provisions of the Wyoming state constitution and the Fifth Amendment to the federal constitution are dissimilar in language, they have the same meaning and are coextensive in application. *Vigil v. State*, 563 P.2d 1344, 1977 Wyo. LEXIS 252 (Wyo. 1977); *Hopkinson v. State*, 664 P.2d 43, 1983 Wyo. LEXIS 325 (Wyo. 1983).

As prohibition represents policy of finality. The prohibition against placing a defendant twice in jeopardy represents a constitutional policy of finality for the defendant's benefit in criminal proceedings. Peterson v. State, 586 P.2d 144, 1978 Wyo. LEXIS 238 (Wyo. 1978), overruled on other grounds, 723 P.2d 42, 1986 Wyo. LEXIS 595 (Wyo. 1986). **And curb on power of state.** 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. Peterson v. State, 586 P.2d 144, 1978 Wyo. LEXIS 238 (Wyo. 1978), overruled on other grounds, 723 P.2d 42, 1986 Wyo. LEXIS 595 (Wyo. 1986). **When double jeopardy attaches.** Double jeopardy does not attach in the case of a jury trial until a jury is empaneled and sworn. Richmond v. State, 554 P.2d 1217, 1976 Wyo. LEXIS 215 (Wyo. 1976). **Statutory elements analysis.** The statutory elements analysis should be used as the foundation for double jeopardy protection in connection with both multiple prosecutions and multiple or cumulative punishments. State v. Keffer, 860 P.2d 1118, 1993 Wyo. LEXIS 154 (Wyo. 1993). For case setting forth statutory elements analysis, see State v. Keffer, 860 P.2d 1118, 1993 Wyo. LEXIS 154 (Wyo. 1993). **And defendant may be found guilty and sentenced as to each offense.** So long as the offenses charged are not factually inconsistent, a defendant may be found guilty and judgment of sentence thereon may be had as to each of the offenses charged without a violation of double jeopardy. Jackson v. State, 522 P.2d 1356, 1974 Wyo. LEXIS 212 (Wyo. 1974), cert. denied, 419 U.S. 1055, 95 S. Ct. 637, 42 L. Ed. 2d 652, 1974 U.S. LEXIS 3665 (1974); Jerskey v. State, 546 P.2d 173, 1976 Wyo. LEXIS 170 (Wyo. 1976).

Discussion of settled double jeopardy principles. See Vigil v. State, 563 P.2d 1344, 1977 Wyo. LEXIS 252 (Wyo. 1977).

Where two statutes are intended to suppress different evils, the acquittal or conviction on one will not prevent prosecution of the other. Goodman v. State, 601 P.2d 178, 1979 Wyo. LEXIS 473 (Wyo. 1979).

Allowance of writ of review would not necessarily place defendant in jeopardy for a second time. In defendant's aggravated assault case, where the district court concluded that the prosecution's conduct provided grounds for a mistrial, granted the defense motion, and dismissed the case with prejudice on the basis of speedy trial concerns, the State's writ of review was appropriate. The State had no other adequate remedy, the issues presented were of constitutional magnitude and public importance, and it was not established that allowing the writ would place defendant in jeopardy for a second time. State v. Newman, 2004 WY 41, 88 P.3d 445, 2004 Wyo. LEXIS 48 (2004).

In closing the Petitioner in this matter is asking this high court review the Wyoming Supreme Court Affirming of the conviction and correct the states supreme courts injustice in this matter.

CONCLUSION

The petition for a writ of certiorari should be granted.

STATEMENT OF FACTS

Defendant asserts that the following statements are true and correct, under Penalty of Perjury to the best of his knowledge.

DATED this 14th of 6 day of, 2023.



Ricky Alan Deephouse Id:34164

40 Honor Farm RD.

Wyoming Honor Farm

Riverton, Wyoming 82501

SIGNED AND SWORN BEFORE ME BY

Ricky Alan Deephouse ON THIS 14 DAY OF

June 2023

Barbara Lee

NOTARY PUBLIC

