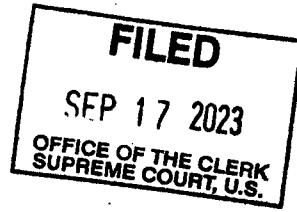


ORIGINAL

23-5985

IN THE  
SUPREME COURT OF THE UNITED STATES



RUSSELL W. BULLOCK — PETITIONER  
(Your Name)

vs.

STATE OF MONTANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th circuit court , Sanfrancisco, california  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RUSSELL W. BULLOCK #36407  
(Your Name)

700 Conley Lake Rd.  
(Address)

Deer Lodge, Mt 59722  
(City, State, Zip Code)

No Phone (inmate)  
(Phone Number)

## **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:

## **RELATED CASES**

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SIGNED BY OFFICER WHO FORGED MY NAME AND LIED ABOUT  
WHAT HE WAS CHARGING ME WITH THEN CHARGED ME WITH

2-FELONIES.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

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 B&C to the petition and is

reported at NINETH CIRCUIT COURT; 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 is unpublished.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 A to the petition and is

reported at BUTTE MONTANA DIVISION; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at N/A FOR C.O.A; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the N/A FOR C.O.A court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; 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 is unpublished.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 NOVEMBER 15-2022

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: july 25-2023, and a copy of the order denying rehearing appears at Appendix C.  
*Granted*  
*Giving*

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 N/A.  
A copy of that decision appears at Appendix \_\_\_\_\_.

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).

**STATEMENT OF THE CASE**

~~order & request~~  
Enclosed

~~\* Statement of Case \*~~

On August 15, 2013, the State charged Appellant Russell Bullock by Information in the Eighteenth Judicial District Court, Gallatin County, with sexual intercourse without consent and burglary. (D.C. Doc. 3.) The burglary count charged that Mr. Bullock knowingly entered or remained unlawfully in an occupied structure "with the purpose of committing the offense of theft therein." (D.C. Doc. 3 at 1-2.)

On December 12, 2014, Mr. Bullock filed a motion to dismiss for violation of his right to speedy trial. (D.C. Doc. 136 at 1-12; *see also*, D.C. Docs. 141 (State's response), 142 (defense reply).) The district court conducted an evidentiary hearing (12/31/2015 Tr.) and then denied the motion by written order. (D.C. Doc. 161 (attached as App. A).)

Mr. Bullock was tried before a jury over three days from February 10 to 12, 2015. During the State's direct examination of an investigating detective, Mr. Bullock thrice objected and lodged a "standing objection" to the State's practice of having the witness read verbatim to jurors from an unadmitted, hearsay transcript, rather than testifying from his own recollection. (2/11/2015 Tr. at 247-49.) The district court overruled each objection (2/11/2015 Tr. at 246-50 (attached as App. B)), and the State continued the exact practice with the next witness (2/11/2015 Tr. at 290-301).

As to the State's burglary charge, the district court instructed jurors that the State had the burden to prove that Mr. Bullock entered or remain in an occupied structure "with the purpose to commit the offense of theft therein." (2/12/2015 Tr. at 224 (attached as App. C); *see also*, D.C. Doc. 202, Instr. 18.) The district court never instructed jurors with the legal elements, defining the required "offense of theft."

The jury found Mr. Bullock guilty of both sexual intercourse without consent and burglary. (2/12/2015 Tr. at 283-84; D.C. Docs. 204-05.) The district court imposed a sentence of 100 years in the Montana State Prison along with various financial obligations, including "user surcharge fees of \$20." (Sent. Tr. at 63-66 (attached as App. D).) A written judgment was entered on June 2, 2015.

(D.C. Doc. 222 (attached as App. E).) Mr. Bullock filed a timely notice of appeal on Monday, August 3, 2015. (See D.C. Doc. 225.)

### **STATEMENT OF THE FACTS**

Mr. Bullock was a 45-year-old, single dad with primary custody over two children, ages 12 and 8. (12/31/2014 Tr. at 111-12.) Mr. Bullock had worked for 13 years in the finance and management aspects of automobile sales. (12/31/2014 Tr. at 113.) He entered custody on July 19, 2013, with serious medical difficulties. He suffers from sleep apnea, fibromyalgia, and fused bones in his foot as a result of nine foot surgeries. (12/31/2014 Tr. at 114.) Mr. Bullock had had open heart surgery eight months prior with complications requiring an additional surgery two weeks later. (12/31/2014 Tr. at 120-21, 160-61.) He requires blood thinners and on the night of his arrest was vomiting blood during police interrogation. (12/31/2014 Tr. at 116, 143; 9/19/2014 Tr. at 18, 23, 63, 65-66.) In addition to these chronic ailments, Mr. Bullock suffered an assault on the night of his arrest resulting in head injuries, broken bones in his foot, and internal bleeding. (12/31/2014 Tr. at 114.) During his months in custody, the head injury produced ongoing migraines, blackouts, and nausea. (12/31/2014 Tr. at 115.) He was twice hospitalized due to seizures and loss of consciousness. (12/31/2014 Tr. at 116-19.) During his 571 days in pretrial custody, he was denied his previously prescribed pulmonary, sleep apnea, fibromyalgia, and pain medications.

(12/31/2014 Tr. at 121-24.) Although usually allowing him oxygen, the jail refused to provide Mr. Bullock a CPAP<sup>1</sup> breathing machine to treat his sleep apnea. (12/31/2014 Tr. at 119-22, 128, 159-60.) Mr. Bullock was also denied orthotics to address his fused foot bones. (12/31/2014 Tr. at 114-15, 156.) The jail did provide Mr. Bullock an antidepressant. (12/31/2014 Tr. at 124, 151.)

The 571-day delay between Mr. Bullock's July 19, 2013 arrest and his February 10, 2015 trial was largely the State's delays in producing discovery. The State did not provide the DNA analysis of swabs taken from Mr. Bullock and the alleged victim on July 19, 2013, until December 16, 2013. (*See* D.C. Doc. 33 (discovery receipt for "DNA Report"); *see also*, State Ex. 12 ("DNA REPORT" signed December 5, 2013, and certified December 10, 2013) (offered and admitted Trial Tr. at 211).) Once that report was disclosed, the omnibus hearing was finally able to proceed on January 13, 2014, and a briefing schedule was set for Mr. Bullock's "Motion to Suppress DNA Evidence." (D.C. Doc. 36 at 3, 6.) On June 12, 2014, new defense counsel sought a trial continuance as defense experts required additional time to prepare due at least in part to the need to obtain "additional discovery from the State Crime Laboratory addressed to DNA collection and processing." (D.C. Doc. 68 at 1.) This Crime Lab information was

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<sup>1</sup> "Continuous positive airway pressure." *The American Heritage Science Dictionary*. Houghton Mifflin Company (accessed July 28, 2016, at <http://www.dictionary.com/browse/cpap>).

not provided until August 15, 2014, following a subpoena duces tecum. (D.C. Doc. 161 at 11.)

More disruptively on April 9, 2014, following a change in defense counsel, the State mistakenly sent discovery regarding interviews identifying several potentially exculpatory witnesses to the wrong counsel. (State's 12/31/2014 Ex. 4 (offered and admitted 12/31/2014 Tr. at 16); 12/31/2014 Tr. at 32; *see also*, D.C. Doc. 161 at 12 (finding "a clerical error").) The State did not correct this error and provide the information to Mr. Bullock's counsel until September 2, 2014. (State's 12/31/2014 Ex. 6 (offered and admitted 12/31/2014 Tr. at 16); 12/31/2014 Tr. at 27-28; *see also*, D.C. Docs. 141 at 7-8 (State's acknowledgment of its error), 161 at 12 (finding the error was corrected on September 2, 2014, when the State provided the discovery to defense counsel).) As a result of this delayed disclosure and defense counsel's need to investigate the late-disclosed witnesses, on October 6, 2014, defense counsel sought and the district court found good cause to order a final trial continuance. (D.C. Docs. 119 at 2-4, 123 at 1.)

At trial, Mr. Bullock testified that on the evening of July 18, 2013, he participated in festivities on Main Street and at the county fair in Bozeman. (2/12/2015 Tr. at 103-07.) He met several 18 to 20-year-olds who convinced him to buy them a bottle of alcohol. (2/12/2015 Tr. at 106-11.) They then drove Mr. Bullock to a pullout a few miles out of town where they hit Mr. Bullock in the

head and stomach and dumped him. (2/12/2015 Tr. at 112-14.) Mr. Bullock fell down an embankment and lost consciousness. (2/12/2015 Tr. at 114.) When he came to, Mr. Bullock, on blood thinners, injured, and intoxicated, began vomiting blood. (2/12/2015 Tr. at 115.) Mr. Bullock, disoriented, in pain, and having lost his glasses, stumbled his way up a hill towards the light of a nearby house for help. (2/12/2015 Tr. at 116-17.)

Although law enforcement was initially skeptical of Mr. Bullock's account of how he came to the location (e.g., 2/11/2015 Tr. at 312), Thomas Nall, one of the young men who Mr. Bullock met at the fair that night and drove him out of town, confirmed that the group had taken Mr. Bullock to a liquor store to buy them alcohol and then abandoned him at a pullout some seven miles from downtown. (2/12/2015 Tr. at 80-90.) Mr. Nall acknowledged the group thought it would be funny to abandon Mr. Bullock so far from town but denied striking him. (2/12/2015 Tr. at 89-90, 95.) Mr. Bullock did have a bump on his head and subsequently experienced symptoms consistent with having suffered a concussion. (2/11/2015 Tr. at 144, 147-48; 2/12/2015 Tr. at 65-67.)

Upon reaching the house, Mr. Bullock walked into the house's open, lit garage, past a parked vehicle, looking for assistance. (2/12/2015 Tr. at 117-18.) In the light, he sat down on the landing leading into the house proper and took off his shoes and socks to assess the damage to his previously broken foot. (2/12/2015 Tr.

at 119.) He determined that his cell phone was dead and then knocked two or three times on the door into the house. (2/12/2015 Tr. at 119.) When no one answered, Mr. Bullock, still dizzy and disorientated, conceived the idea to drive a vehicle from the garage down to the end of whatever road the house was on to get his bearings. (2/12/2015 Tr. at 120.) Opening the vehicle's rear door next to where he'd been sitting to look for keys, he surprised and scared a young girl, A.W., who'd been lying in the car. (2/12/2015 Tr. at 120-21.) Mr. Bullock, himself startled, reflexively put his hand over the girl's mouth. (2/12/2015 Tr. at 121-22.) After a couple seconds, Mr. Bullock removed his hand, and the girl asked him where her brother and mother were and then said she was eight. (2/12/2015 Tr. at 122-23.) Mr. Bullock told the girl that he had a son who was ten and that he was looking for keys or a phone to find help. (2/12/2015 Tr. at 123.)

After Mr. Bullock looked around unsuccessfully for keys or a phone, the house door briefly opened and he saw a small silhouette. (2/12/2015 Tr. at 123-24.) Mr. Bullock then left the garage and the girl still in the car. (2/12/2015 Tr. at 124.) Outside, he stopped to urinate in some tall grass, potentially transferring DNA from his hand that touched the girl's face or saliva to his penis. (2/12/2015 Tr. at 125; *see* 2/11/2015 Tr. at 207-09, 220-24.) Feeling increasingly dizzy and nauseous, Mr. Bullock vomited more blood and laid down on his back, trying to

get his head together. (2/12/2015 Tr. at 125-26.) A few minutes later, he was arrested where he lay by sheriff's deputies. (2/12/2015 Tr. at 126-27.)

A.W. testified that she had fallen asleep in the backseat of her mother's car after a day at the county fair. (2/11/2015 Tr. at 75.) When she awoke there was an older man in the garage. (2/11/2015 Tr. at 76-77.) She did not remember him saying anything to her but declined to testify further as it brought back bad memories. (2/11/2015 Tr. at 76-77, 81.) She did not accuse Mr. Bullock of sexual misconduct. (*See* 2/11/2015 Tr. at 76-81.) A.W. exited the vehicle and as she was going to the door into the house, saw her brother at the door. (2/11/2015 Tr. at 77-79.) She then went inside with her brother. (2/11/2015 Tr. at 80.)

Although A.W. and Mr. Bullock were the only two direct witnesses to their interactions, the State presented circumstantial evidence from A.W.'s brother who claimed to have heard from inside the house A.W. in the garage saying "Ouch, stop it" and then later to have seen a startled Mr. Bullock standing by the front of the vehicle with his bare leg and butt visible. (2/11/2015 Tr. at 90-94, 127-29.) The brother also identified shorts on the garage floor as ones A.W. had been wearing at the county fair. (2/11/2015 Tr. at 99.) The doctor who saw A.W. later in the morning testified to broken blood vessels in her right eye, upper left torso and arm, right thigh and knee, and left lower leg as well as redness and small abrasions to

her labia majora, labia minora, and hymen. (2/11/2015 Tr. at 168-6, 172-73.)

There was no transection to her hymen. (2/11/2015 Tr. at 178-79.)

After his initial hospitalization, officers brought Mr. Bullock to the station in custody for interrogation. (2/11/2015 Tr. at 271-72.) Det. Pallach, the sex crimes detective assigned to the case, read a *Miranda* rights form to Mr. Bullock advising him that the detective would like to talk to him about a “criminal trespass.” (Def. Trial Ex. A (offered and admitted 2/11/2015 Tr. at 322); 2/11/2015 Tr. at 274, 323-24, 326-27; *see also*, 9/19/2014 Tr. at 96-99 (district court’s questioning of the detective).) In between bouts of vomiting blood, Det. Pallach had Mr. Bullock sign the form. (2/11/2015 Tr. at 275, 328-30.) Although the form signed by the detective and Mr. Bullock attested that Mr. Bullock had read the form, he had not. (2/11/2015 Tr. at 322; *see also*, 9/19/2014 Tr. at 99-100 (district court’s questioning of the detective).)

Later at the hospital, after obtaining various DNA swabs from Mr. Bullock, Det. Pallach asked everyone else to leave Mr. Bullock’s hospital room so that he could speak with Mr. Bullock alone. (2/12/2015 Tr. at 17.) For reasons he could not explain, Det. Pallach’s digital recorder was turned off during this encounter. (2/11/2015 Tr. at 287-89; 2/12/2015 Tr. at 17.) Mr. Bullock recounted that during this unrecorded portion, Det. Pallach pressured him to say that he had touched the girl sexually. (2/12/2015 Tr. at 136-40.) Det. Pallach subsequently turned his

recorder back on and asked Mr. Bullock to run through events again. (2/11/2015 Tr. at 288; 2/12/2015 Tr. at 18, 139.) Although there is no information in the record as to who transcribed the recording, the State had a purported transcript of this audio recording at trial. (E.g., 2/11/2015 Tr. at 290-91.) Through Det. Pallach's recitation of the transcript, the State put before jurors Mr. Bullock's *This detective played recording asked me several questions ?  
with  
Then turned the recorder off + on again ?* purported admissions that he "touched her vagina with my hand" and he "must have [taken my shorts off] cuz I remember putting them back on." (2/11/2015 Tr. at 291:20-21, 294:19-20.)

After Mr. Bullock was transferred to jail, he spoke with Det. Pallach's supervisor, Det. Lewis. (2/11/2015 Tr. at 233, 237-39.) Det. Lewis recorded Mr. Bullock. (2/11/2015 Tr. at 239.) Through Det. Lewis's recitation from a purported transcript of this recording, the State again put before jurors admissions such as "I saw the girl in the backseat and I thought she was older than she was, it was dark, and as soon as she told me how old she was I'm just like whoa, I mean I touched *(face)* her, but I mean that's all I did." (2/11/2015 Tr. at 247:11-15.) Det. Lewis also read to jurors that Mr. Bullock said he "went into the garage and looked to see if there was keys in the ignition" and "was going to borrow their car just to get to the end of the road and leave it." (2/11/2015 Tr. at 245-46.) Again, there is no information in the record as to who transcribed this recording.

## **STANDARDS OF REVIEW**

Within a speedy trial claim, this Court reviews the district court's factual findings to determine whether they are clearly erroneous but reviews the final, four-factor balancing de novo to determine whether there has been a violation of the defendant's constitutional right. *State v. Ariegwe*, 2007 MT 204, ¶ 119, 338 Mont. 442, 167 P.3d 815.

This Court generally reviews a trial court's evidentiary rulings for an abuse of discretion, but where the trial court's ruling is based upon an interpretation of an evidentiary rule, this Court's review is de novo. *State v. Derbyshire*, 2009 MT 27, ¶ 19, 349 Mont. 114, 201 P.3d 811. “[A]ll issues involving interpretation and application of the law are decided by the appellate court on the basis of the law, without according deference to the trial court.” *State v. Davis*, 2016 MT 102, ¶ 30, 383 Mont. 281, 371 P.3d 979.

This Court reviews a district court's decisions pertaining to jury instructions for an abuse of discretion; however, the district court's discretion “is ultimately restricted by the overriding principle that jury instructions must fully and fairly instruct the jury regarding the applicable law.” *State v. Hovey*, 2011 MT 3, ¶ 10, 359 Mont. 100, 248 P.3d 303.

## **REASONS FOR GRANTING THE PETITION**

IN THE SUPREME COURT OF THE  
UNITED STATES

CONCLUSION

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THE STATE OF MONTANA, VIOLATED MY CONSTITUTIONAL RIGHTS &

AND CHARGED ME WITH A CRIME , I DID NOT COMMIT.

NOW THEY ARE TRING TO COVER IT ALL UP BY REFUSING

TO GRANT ME A C.O.A. , SO IM ABLE TO EXPOSE THERE

CURRURTION.

I NEED MY CASE REMANDED BACK TO THE U.S. DITRICT

COURT BUTTE MONTANA DIVISION IN ORDER TO OBTAIN A

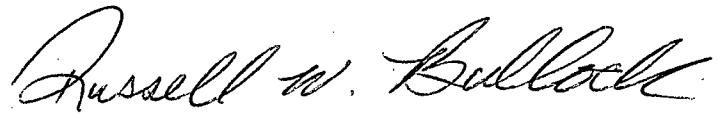
C.O.A AND TAKE MY CASE TO THE HIGHER COURTS AND

PROVE THE VIOLATIONS OF MY CONSTITUTIONAL RIGHTS &

Innocents.

RESPECTFULY,

RUSSELL W. BULLOCK



9-17-23

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell W. Bullock".

Date: SEPTEMBER 17 - 2023