ORIGINAL

TRANSCRIPT OF PROCEEDINGS

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES W. BRITT, JR.,

Petitioner,

vs. No. 70-5041

STATE OF NORTH CAROLINA,

Respondent.

Washington, D.C.
October 14, 1971

Pages 1 thru 28

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CHARLES W. BRITT, JR., Petitioner,	:	
vs.	:	No. 70-5041
STATE OF NORTH CAROLINA, Respondent.	:	

Washington, D. C.,

Thursday, October 14, 1971.

The above-entitled matter came on for argument at 11:09 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

ROBERT G. BOWERS, ESQ., Suite 3-5, Hughes Building, P.O. Drawer 1557, New Bern, North Carolina 28560, for the Petitioner.

MRS. CHRISTINE Y. DENSON, Assistant Attorney General, N. C. Department of Justice, Box 629, Raleigh, North Carolina 27602, for the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 5041, Britt against North Carolina.

Mr. Bowers, you may proceed whenever you're ready.

ORAL ARGUMENT OF ROBERT G. BOWERS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. BOWERS: Mr. Chief Justice, and may it please the Court:

The chief judge of the North Carolina Court of Appeals, Judge Raymond Mallard, makes the comment frequently, has to me, that every case that he sees in his court has a hooker in it.

Well, I was noting the previous argument, and this one has to do with a transcript, but it has a little bit different twist to it.

In this case, differing from the previous case, the defendant -- there's no question about his indigency now or then. He is now in State prison. He is a young man who, I don't think there is any question, ever raised by anybody, but that he was absolutely impecunious.

Now, he was tried; the trial beginning on November the 11th; he was not convicted; the jury verdict was never reached. There was a mistrial order. And the defendant was then set down for trial again.

Prior to the second trial, very shortly after the

first trial, a motion was filed for a transcript. You will find the order of mistrial on page 11 of the Appendix. On the bottom of that page it has "Motion for Transcript" which, of course, obviously is an affidavit. In which the defendant signed an affidavit that he was indigent, that I had advised him that a transcript would be of great help, and that it would be available if we could afford to pay for it.

The motion was made on that affidavit, which was summarily denied by Judge Fountain, who is a very fine and gracious judge, a very gifted judge. But he and I disagreed on this. But it was, as a matter of fact, without argument, denied. To which the defendant excepted. And this is the crux of our case: whether or not the defendant was entitled to a transcript of the evidentiary portion of the trial which commenced on November the 11th.

The mistrial was ordered on November the 14th. The trial itself -- the jury had commenced its deliberation at 9:30 on that morning. There were three days of trial.

Now, the question has been raised in the previous case about whether or not counsel could reconstruct. Well, there again, we have a peculiar situation here in which we don't need to have the reconstruction. That we could probably have done for purposes of an appeal. But for purposes of preparation and cross-examination at the second trial, this we thought was absolutely essential.

Q In other words, you wanted a transcript of the evidence of the State's witnesses at the first trial?

MR. BOWERS: Yes, sir.

Q To cross-examine them if they testified again at the second trial?

MR. BOWERS: Yes, sir. Both for that and for investigative purposes prior to the second trial.

Now, I will be very frank on this. I used my own recollection in trying to investigate what had been brought out in the first trial, and I don't know that I made many errors in that; but it would have still been most helpful.

Now, commenting collaterally on that: After the second trial and after we had the transcript, in preparation for the appeal to the Court of Appeals --

Q Which transcript?

MR. BOWERS: The second; of the second trial. We have never seen the transcript of the first trial. So far as we know it has never been prepared in any way, shape, form, or manner.

Q How long did that first trial take?

MR. BOWERS: Four days. Well, actually three days of trial and one day of jury deliberation. I don't want to mislead the Court in any way.

Q It was a murder trial, was it?

MR. BOWERS: Yes, sir.

In this particular case, the young defendant -- I say young; 20, 21 years old; and at my age, that's young -- was charged with beating his girlfriend's grandmother to death with a frying pan in an effort to rob her of her worldly possessions. Now, whether or not he's guilty is not a matter that's before this Court or was never subject for my determination; I was appointed to represent him, and I hope I did the best job that I could possibly do.

But, be that as it may be, I don't think that I did the best job that I could have possibly done, had I had that transcript.

It's difficult to argue this matter in this Court and try to put this Court back in the courtroom in Craven County, New Bern, North Carolina. We had a fine judge. We had a good court. The courtroom is a fine place to work. But there was one witness, who was the primary witness for the State. A Captain P. M. Bratcher of the New Bern Police Department.

Now, Captain Bratcher had made no notes. This appears in the transcript which is before you, of the record which is before you, had made no notes of any kind, type, or description, with respect to anything that he had done in connection with the investigation of this case. Yet he testified that he had spent one hour and a half at the scene; but if you will read the testimony as elicited in the second

trial, you will find that he didn't account for more than five minutes of his time there.

He said that he was at the funeral home for an hour and a half. Yet he had made no notes. He said he -- he testified with respect to the arrest of the defendant, without a warrant; his incarceration, without a warrant, without being taken before a magistrate. He testified about taking him out of jail and taking him back to the Detective Division of the Police Department, and questioning. Oh, yes, he testified that he cautioned him under Miranda.

He testified further about the statements made to him, but nowhere in this whole procedure had he ever filed the first note with his supervisors, nor had he made the first note for his records.

We could not have asked to examine the notes that he made, under the Jenks rule, we couldn't have done anything. The only thing he did was sit in that courtroom with a folder in his hand, which we found to contain, upon questioning, the record of the coroner's inquest.

Q Is this -- who is this, P. H. Bratcher?

MR. BOWERS: P. M. Bratcher.

Q P. M. Bratcher?

MR. BOWERS: Yes, sir.

Now, this, I will frankly say, I don't think this prejudiced the defendant a great deal in his doing that,

because we pointed out what he was doing, and I think it probably militated more against him than it did in his favor.

I'm trying to be candid about this. I'm not trying to say that the prosecutor was guilty of any misconduct of any kind, type, or description.

Q Let me just ask, in order to get this straight: The prosecutor did or did not have the transcript?

MR. BOWERS: No, sir; he did not. Or if he did, I did not know about it; and I don't think that he did. He was a very honorable man, and is, and I'm sure he would have told me had he had it. In fact, he would probably have handed it to me if he'd of had it.

Q Was a reporter available to you?

MR. BOWERS: Your Honor, yes, sir, the reporter was available.

Q And the reporter had his notes?

MR. BOWERS: Yes, sir, the reporter had his notes.

Q Did you have any specific questions about what some specific answers to questions were that you could have had the reporter read them?

MR. BOWERS: It would have necessitated probably a day's delay for him to go get his notes.

Now, this would have -- had he brought his notes to court with him, this would have been available.

Q Which you could have had him do, with prior

notice?

MR. BOWERS: Yes, sir.

Q Did you have a reporter --

Q You could have had him at the second trial --

MR. BOWERS: Now, one moment here, if I may inter- -- excuse me, may I answer your question there?

Q Certainly.

MR. BOWERS: One question in this, you see, the motion was denied; we were unable to get a hearing on the motion, it was denied, and we were forced to go immediately, within ten minutes, into the selection of the jury.

Q Yes, but before court, if you had asked the reporter to bring the notes there, the reporter would have brought them.

MR. BOWERS: I'm sure he would have. Frankly, I didn't. I'm not trying to --

Q Well, let's see, Mr. Bowers, I wonder how practical that would have been. You couldn't put him on the stand.

MR. BOWERS: No, sir.

Q What you would have had to do was talk with him outside the courtroom, outside the trial, get a recess or something, after you heard the captain testify and you thought he had testified differently at the first trial, you'd have had to go to the reporter and say, "Hey, I think I remember

such-and-such that he said." Isn't that what you'd have had to do?

MR. BOWERS: This is correct.

Q Well, how practical would that have been?

MR. BOWERS: I don't think it would have been practical at all.

Q Well, would the reporter have read you his notes before the trial, if you'd have asked him?

MR. BOWERS: Yes, sir, he would have, but, there again, my problem was this: had he read me those notes it still would have not furnished me the need that I had for cross-examination later during the --

Q Right, how could you have known what the need was until you'd heard what he had to say --

MR. BOWERS: Still had a risk.

Q -- at the second trial?

MR. BOWERS: No, sir; I couldn't.

This was my problem, I didn't know what the situation would be until it arose.

Q I think you may have answered one question a little too hastily there, and I'd like to clarify it. To someone's question you said you could not have put him on the stand. What would prevent you from calling the reporter, putting him on the stand, and asking him to read into the record of the second trial testimony that he had taken down in

the first trial?

MR. BOWERS: I could not have put him -- I did answer that too hastily -- I could not have put him on the stand until I had reviewed what he had to testify about, yes.

Q Well, you conceivably could take a chance if you were sure, by just putting him on to clarify the record.

MR. BOWERS: Of course, there it would have been the problem, he was also the court reporter that was taking the second trial.

Q Well, that wouldn't stop it.

MR. BOWERS: No; I agree with you, that wouldn't have;--

Q There are ways to work it.

MR. BOWERS: -- it would have been inconvenient, but it would not have stopped it.

Q Well, is that the way you cross-examine witnesses? I never heard of anything like this.

MR. BOWERS: No, sir.

Q Well, I submit that it is often done, counsel, and I have done it myself in the trial of cases, to call the reporter from the prior trial, put him on the stand, and read the testimony of the particular witness, or some other aspect of the trial.

MR. BOWERS: Yes, sir; but my problem in cross-examination -- that would have been rebuttal testimony, yes,

that would have rebutted what he said, but it would not have given me the paper that would have said,"now, on such-and-such a day did you not testify as follows,"and then ask him. "And was your answer not as follows?" "Now, how do you put these two together?. How do you get your position that your answer today is in conformity with your answer before?"

The type of cross-examination is detailed, of course. And this is where our complaint is, not with the fact that the court reporter was not available to come back later and say, "Oh, no, he testified this way on that day."

Q But, do I understand correctly that — and this may be of some importance -- that you said that if you had asked the reporter, out of court, he would have read back any part of the notes of the first trial that you wanted?

MR. BOWERS: Yes, sir. Now, I say this -- may I clarify that a moment? The court reporter and I are good friends. I don't think he would turn down my request. I don't think I would have had any legal standing to have demanded that he do that, not in our system. But because of the fact that the court reporter in a small eastern North Carolina town is usually a friend of all the lawyers, I could have asked him and I'm sure that he would have accommodated me to that extent. I didn't; maybe I should have.

Q Mr. Bowers, how long was it between the two trials?

MR. BOWERS: Approximately a month.

Q And you defended him at both trials?

MR. BOWERS: Yes, Your Honor.

Q Same reporter both times?

MR. BOWERS: Yes, sir. Same judge, same reporter, same counsel.

Q Different jury?

MR. BOWERS: Different jury. And, frankly, somewhat different testimony.

Now, I will say this, I don't want to mislead the Court in that respect. They had additional witnesses at the second trial that had not been at the first trial. I'm not trying to sit here and try to say that they mended a whole lot of fences with their previous testimony. Frankly, I don't know how many fences they did mend, because I haven't been able to read the transcript; and my own personal recollection doesn't tell me.

Q Your personal recollection is what?

MR. BOWERS: Does not tell me how exactly all the discrepancies between the two trials. I don't claim to have perfect recall; I wish I did, but I don't. And I frankly don't believe many lawyers do. And I think that this is a very necessary element. I'm fully well aware of some decisions of the circuit courts that are opposed to my position, and I'm perfectly well aware of the ones that are in favor of my

position. Of course they're the ones I would like to argue more strenuously than the three that I found that are opposed. And I'm sure Mrs. Denson will argue those diligently.

However, there is very little law. I'm not going into the Griffin case, you've heard that, I'm sure, until it's coming out -- where you'd like never to hear that again. But it's still, we think, basic law that justice should not depend upon the thickness of a man's pocketbook.

And if a transcript was available to me or to anybody else that had a pocketbook thick enough to pay for it, it certainly should have been available to young Charles W. Britt, Jr.

Q Well, that doesn't quite square with your response a few minutes ago that if you had asked the reporter to read it you would have got it.

MR. BOWERS: Now, I say that he would read it back to me. Having it in writing, having it available to me for use for cross-examination, I would not have been able to obtain that.

If there are no further questions, I will --

Q Well, I suppose your position would be the same with respect to a preliminary hearing, the transcript of a preliminary hearing, grand jury testimony?

MR. BOWERS: No, sir; it would not. It would not, at North Carolina or anywhere that I've had any dealings with

grand jury testimony, because that's neither available to the State nor to the defendant.

Q It's secret?

MR. BOWERS: It's a completely secret hearing.

Q Well, in this case the transcript wasn't available to the State, either.

MR. BOWERS: It was available had they asked for it. This the State could have gotten, merely by requesting it from the court reporter; the court reporter would have typed it, he would have billed the State back for --

Q Well, what about a preliminary hearing?

MR. BOWERS: Frankly, we don't have court reporters at preliminary hearings, normally.

Q You don't?

MR. BOWERS: I think we should, but, unfortunately, we don't.

Q But the rich man can have one there if he wants to?

MR. BOWERS: Yes, sir.

Now, I might say this, in the Fourth District,in our State, the judges are now requiring the court reporter to come in for preliminary hearings; but this is not under any mandate that has come down.

Q But you would make the same argument about the preliminary hearing testimony then?

MR. BOWERS: Yes, sir; I certainly would. Representing the defendant, I certainly would make that, because I think he's entitled to every defense that's available to anybody.

Q Mr. Bowers, do you feel that the fact that the same counsel defended in both trials is a factor?

MR. BOWERS: I don't think it's a factor that should be considered in this particular matter. I think it's a factor, naturally, in the actual trial, because there's a certain feel to any case, that any lawyer gets that tries cases; and I think that with this feel he can go through the second trial probably better than the first one.

Q If we were to go along with you, would the ruling place a premium on mistrials?

MR. BOWERS: No, sir.

I think that the State would argue that it would, but I don't think so. I frankly think that we've got an excellent judiciary in North Carolina, and I think that -- well, in this particular case, we had no transcript; the jury stayed out one day; and the mistrial was over. This was not a matter of deciding whether a transcript would be made available or not. That factor never entered into it. The court had found they were in a hopeless deadlock.

Now, so far, the court -- there cannot be a mistrial in North Carolina unless a judge orders it. And most of the judges require that the jurors sit there until every reasonable

avenue has been pursued and they're satisfied of this fact.

Q Well, we've seen a lot and heard a lot about disruptive tactics in the courtroom these days. I wondered if ruling in your favor here would tend to promote further disruption, so that counsel can get a transcript of the first trial and be better off in his examination of witnesses at the second one?

MR. BOWERS: I think not. I frankly think that the disruptive tactics that have been followed by some -- well, I could use a word of approbation here, but I think I'd better leave it off -- some who are not as ethical as others, and some who are trying to try cases other than in legal process, are still a rarity; and I hope they remain a rarity. I hope they disappear entirely.

But I don't think that this particular procedure of providing transcripts would encourage that in any way. I certainly -- if I --

Q You say you have nothing of this kind here, as I understand?

MR. BOWERS: No, sir; nothing. No, sir; nothing whatever. And in fact I can't conceive of that being the basis. I think they're trying to pull political views rather than trying to get transcripts.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Bowers.

Mrs. Denson.

ORAL ARGUMENT OF MRS. CHRISTINE Y. DENSON,

ON BEHALF OF THE RESPONDENT

MRS. DENSON: Thank you, Mr. Chief Justice. May it please the Court:

We want very strenuously to divorce this case from the one this Court has just heard, because we're in, of course, a far different situation with this case.

The North Carolina system I am very proud of, we do have trials de novo even for the pettiest of misdemeanors; and in the event those cases are appealed or collaterally attacked by certiorari or by habeas corpus filed somewhere else, a transcript would be available, and the narrative statement that our appellate courts require would be forthcoming from that transcript, which would be made available.

So we're certainly not talking about the cases that I think the Court has -- as I read your decisions -- previously decided, where we're talking about a direct attack, we're talking about a direct appeal, we're talking about a collateral attack on habeas corpus, with the question of transcript being made available.

Rather, we're talking about the mistrial situation, which can be extended -- thank you -- we're talking about the mistrial situation which, as the Court has already pointed out, can be extended not only in the mistrial application but in preliminary hearing. As Your Honors pointed out, a rich man

could hire a reporter to come in and take the transcript, and could make that available to himself on his trial, and could thereby impeach his witnesses.

We're talking also about the trial de novo situation, which we have in North Carolina and in many other States; a rich man again could hire a reporter to come in on his traffic offense and hear the testimony there and have that reporter available at his appeal in superior court, to again try to impeach the testimony.

So we're talking about an application that is far divorced from the previous decisions of this Court, and we're talking about an application that could be very sweeping and could go not only to this mistrial situation, of which, hopefully, there are a limited number, but could go to the preliminary hearing or to any other trial or any other kind of testimony by a witness who comes on at the trial which finally results in a conviction. And we would emphasize that fact to the Court.

We have also in this case no indication that counsel did try to contact the court reporter. We note that the Appendix shows that the motion for the transcript, whether actually presented to the court at that time or not, was dated the 25th of November, and the man was not tried until mid-December. And so counsel knew what he was going to do on the 25th of November, at least, in making his motion for a

transcript. And there is no evidence that he made any effort to get up with the court reporter.

He says the reporter would have told him what was in that transcript; he could have made notes himself; and then, again, the reporter was available and if, on trial, he found from his own notes that there were some discrepancies, he could have asked those questions of the court reporter and brought the court reporter on to impeach the witness.

As it was, he had, of course, available to him the fact that this Captain Bratcher had made no notes. He pointed that out to the jury. He pointed out to the jury that the alleged confession was never reduced to writing, again calling into question the credibility of that witness.

In fact, we think that he had available to him all of the things which the jury could see that would impeach the credibility of this witness. We think, rather, we've got a case where, although there are some alleged discrepancies in the testimony, -- and we don't know what those discrepancies actually were -- they're not important to this case.

We're talking about the difference between questioning a witness 30 or 45 minutes and an hour and a half. We don't think that's important. Talking about whether or not he made some comments at the first trial about the defendant's clothes; again, that can't be important. Question of who took the fingerprints from the water glass: was it this Officer

Dowdy, who was present the second time the defendant confessed, and testified about that, or was it Captain Bratcher himself? That can't be important.

Q Was Captain Bratcher the key prosecution witness?

MRS. DENSON: Your Honor, I would say no, I would not say he was.

Q He testified as to the defendant's confession, didn't he?

MRS. DENSON: He testified as to the defendant's confession the first time; then Officer Dowdy got on, who was present the second time the defendant repeated his statement in front of Bratcher, Ethel Best, his girlfriend, and Officer Dowdy. So we have a reconfirmation of those things. His statement was essentially the same, even down to the fact that Ethel Best dealt the blow with the knife and he didn't do that himself.

So we have some corroboration there of Bratcher's testimony by Officer Dowdy.

Q There was no eye-witness testimony, was there?

MRS. DENSON: Yes, Ethel Best herself, his girlfriend, who was present, testified. And the discrepancy between what she had to say and what the confession of the defendant revealed was a difference in who struck the blow with the knife. She said the defendant did it, and that she

only stayed there because she was scared of him. The defendant said that she dealt the blow with the knife.

Q I thought it was a frying pan that killed the decedent.

MRS. DENSON: It was a frying pan that killed the deceased. The medical testimony of the doctor was that the knife wound was a superficial wound and would not have inflicted death.

Q Is it P. M. Bratcher or P. H. Bratcher?

MRS. DENSON: I don't recall from the record, I believe --

Q On page 30 he's called P. H. Bratcher, and in the index of witnesses he's called P. M. Bratcher.

MRS. DENSON: I believe it's P. M.

Q It's not important.

MRS. DENSON: I talked to Captain Bratcher as recently as yesterday about the matter.

In short, we think that the alleged discrepancies here, and counsel admits that he can't say for sure what those discrepancies are, are not important discrepancies in this case. And for the Court to use this case as a step, to take a very giant step, to make transcripts available to defendants, we think would be a serious miscarriage of justice.

As the Court has pointed out, we think that this would put a premium on mistrials. Not only, of course, do the

disagreeing jurors cause mistrials, but the conduct of the defendant or of some witness or even of some police officer, as we've had in our own State, where the policeman will put defendants in handcuffs in view of the jury, or some such thing, can cause a mistrial.

If the defendant has some key testimony and his attorney has not known about it before, and he doesn't like what his attorney does by way of cross-examination of that witness, we think it would put a premium on the mistrial situation; for him to cause a mistrial, knowing that he could get a free transcript from the State and have that available for his attorney on the next trial to better cross-examine the witnesses.

So we fear that result.

We fear also, of course, the overburdening of our trial courts. We make transcripts available when the defendant is directly appealing or collaterally attacking his conviction. We feel that they're entitled to that in North Carolina. We have done that voluntarily on the smallest offense.

But to require the court reporter to delay the activities of the court, to delay the preparation of transcripts for direct appeals, in order to prepare the transcripts of these mistrials, would again cause the delay in the court system, and would seriously overburden the reporting of our

own State courts and those of other States in the federal courts, we think.

For that reason, we ask the Court not to take that step.

Q How many mistrials did you have in this county last year?

MRS. DENSON: Your Honor, I don't have those statistics --

Q About two or three?

MRS. DENSON: Your Honor, I have no idea. I don't even have the statistics for our State.

Q So you really don't know how much of a burden it would be, do you?

MRS. DENSON: No, we don't. But we think that this --

Q I'm not disputing what you say, but you emphasize the burden.

MRS. DENSON: Well, Your Honor, far from those that we have now, we are afraid that this will give them an additional reason to make a mistrial. Not only the defendant who would tend to be disruptive anyway, but the defendant who, knowing that he's got a transcript available if he causes a mistrial and feels, for some reason, that he's not happy with counsel and could do better the next time, maybe even changing counsel, this would give him an additional reason to want one.

Q Well, what I'm suggesting is -- I'm wondering

whether you need all that additional weight on this train. That's one thing I --.

MRS. DENSON: Well, I don't think anyone knows, Your Honor; certainly I don't. I don't know the incidence of it now, but I'm afraid that the incidence would be increased. And this is our great fear.

We think that the defendant, on a showing of need, might be entitled to a transcript. There may be some reason that the court reporter is not available. There may be some reason of a key State's witness, which we don't have in this case. There may be occasion for some key testimony that he does want to check.

But, first of all, we don't have any indication in this case that he couldn't have secured it if he tried; and, secondly, we don't have that indication of special need in this case.

Q Well, as I recall it, your appellate court said that there had been no showing of discrepancies or need for the transcript in this case?

MRS. DENSON: No, I think the essential reason our court made no decision was the first reason I alluded to, that there had been no showing that he had not had the court reporter available at all, and that there is no showing that he made any effort to make use of that former transcript in between the trials. And for that reason there was no showing

of need.

Q But didn't they say that there hadn't been any showing that there were discrepancies in the testimony?

MRS. DENSON: I believe Judge Mallard did discuss, since I urged to him as I urge to this Court today, that the points at which there were alleged discrepancies, which appear in the Appendix, are minor points.

Q Was there a motion for a new trial after this second trial?

MRS. DENSON: Yes, I believe there was; the usual motions that are made for a new trial, and so forth.

Q And did it include this ground? It must have.

MRS. DENSON: I think he used all of his grounds he had available, yes, sir.

Q And I suppose after trial, if he had thought there were discrepancies in the testimony, after trial he could have asked the court reporter to read this testimony, and might have pointed up specific discrepancies?

MRS. DENSON: Well, yes, Your Honor. Practically, I think the time for doing that would be before the defendant rested his case. The court, of course, gives him time to get ready to make his presentation, and at that point I think he could have searched his memory for any discrepancies he thought there were.

The court reporter was there at that time, and

he could have asked for a recess. And, taking two years to come to this Court certainly is far and away a greater delay than the one day that might have been occasioned by getting the court reporter to search his notes. And, although I cannot say this to the Court with certainty, I'm fairly certain the court would have allowed him that delay if he told the court that he thought there were discrepancies and he wanted to see what the reporter's notes showed.

We think there has been an absence by the defendant of any showing for special need in this case. And, at the very least, if the Court is going to say transcripts should be available, we think it ought to be restricted to those cases where there is some sort of showing or need.

For that reason, we would ask the Court not to extend the doctrine on transcripts and to say that in the case of mistrials they remain a nullity, they're not important for double jeopardy, they're not important for these reasons unless there is some special need in the case.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mrs. Denson.

Mr. Bowers, do you have anything further?

REBUTTAL ARGUMENT OF ROBERT G. BOWERS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. BOWERS: Your Honor, I want to make just one very -- 30-second -- short comment:

In our statute, which appears on page 5 of my brief, 7A-450, subsection (b) says: "Whenever a person, under the standards and procedures set out in this subchapter, is determined to be an indigent person entitled to counsel, it is the responsibility of the State to provide him with counsel" -- and these are the important words -- "and the other necessary expenses of representation."

I would like to point that out to the Court, and only that. With that, I sit down.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Bowers.

Thank you, Mrs. Denson.

The case is submitted.

[Whereupon, at 11:40 a.m., the case was submitted.]