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Sanders v. Easley 230 F.3d 679 (4th Cir. 2000)

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I. Facts

In 1982, Stanley Sanders ("Sanders") was convicted and sentenced to death for the murder and rape of Jacqueline Lee. His conviction and death sentence were overturned on appeal because of problems with the trial transcript. In 1985, Sanders was re-tried and again sentenced to death. The conviction was affirmed on appeal, but the Supreme Court of North Carolina vacated the death sentence because of deficiencies in the penalty phase jury instructions. In September 1995, ten years later, Sanders's third sentencing hearing ended in a mistrial. The jurors were instructed to consider the following four issues: (1) whether the State had proved one or more aggravating factors; (2) whether Sanders had established the existence of any mitigating circumstances; (3) whether the aggravating circumstances outweighed the existence of any mitigating circumstances; and (4) whether the weight of the aggravating circumstances was sufficient to impose the death penalty.[1]

The jury began deliberations at 10:45 a.m. and sent a note to the court at 4:00 p.m. The note indicated that the jury had concerns about the weighing of aggravating and mitigating circumstances. The court re-instructed the jury on the third and fourth issues. The jury resumed deliberations until 5:05 p.m. When the judge brought the jury into the courtroom to dismiss it for the evening, the judge noticed a note from the jury on top of the materials collected. The note contained an incomplete question from the jury. The next morning the court asked the foreman how long the jury had been deliberating on the current issue. The foreman responded that the jury had worked on the current issue since the previous afternoon and had taken three votes on that issue. The court instructed the jury to continue deliberations at 9:49 a.m. Thirty-one minutes later, the jury sent another note to the court that read, "We have a vote of 11-1 Hung jury on the final Issue [sic]."[2] The court questioned the foreman and learned that the jury began deliberation on issue four that morning. The court sent the jury back to continue deliberations. The jury sent yet another note to the court. This note indicated that (1) the jury could not come to a unanimous conclusion as to the fourth issue, (2) the jury wanted to know if a life sentence meant

1. Sanders v. Easley, 230 F.3d 679, 681 (4th Cir. 2000).
2. *Id.* at 682 (citing J.A. 184).

life in prison, and (3) one juror had conducted her own investigation and had spoken to a judge and police officers. The court learned from the foreman that juror Renita Lytle ("Lytle") told the jury that she had spoken to a judge and police officers and was told that Sanders would serve at least twenty years if sentenced to life imprisonment. After learning this, the court considered declaring a mistrial, but defense counsel and the prosecutor urged the court to question the juror in hopes of avoiding this result. When questioned by the court, Lytle explained that she had lied to the other jurors. Lytle had called her nephew, a police officer, but did not discuss the case and did not speak to any judge. She had done this because of pressure from the other jurors to change her vote on whether to impose death. She also indicated to the court that she understood life in prison to mean life in prison without parole, but that the other jurors told her that Sanders would only serve a few months and that when he got out the other jurors hoped Lytle or one of Lytle's family members would be Sanders's next victim.[3]

Based on the questioning of Lytle, the court found that it did not have cause to cite Lytle for juror misconduct. The court instructed the jury that parole eligibility was not relevant to the sentencing determination. The jury was told to consider that life imprisonment meant imprisonment for life. The jurors were told not to surrender their convictions in reaching a verdict. Deliberations resumed, but another note was sent to the court twenty minutes later.[4] This note said that Lytle would not vote for the death penalty and that she had made statements that led other jurors to think she did not believe in the death penalty, although when pressed on the issue she said she did believe in the death penalty. Defense counsel asked the court to determine if the jury was still deadlocked, and if so, to impose a sentence of life imprisonment. Counsel noted that the jury had "degenerated into something that is much less than jury deliberations."[5] The prosecution moved for a mistrial, and the court granted the motion. The court based the mistrial on its conclusion that numerous instances of juror misconduct had occurred prior to the expiration of a reasonable length of time to deliberate, so that the court was required to grant a mistrial rather than impose a sentence of life imprisonment as provided by North Carolina General Statute Section 15A-2000(b).[6]

Sanders's fourth capital sentencing hearing was scheduled for March 1996. Sanders's motion to cancel the hearing on double jeopardy grounds

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3. *Id.* at 682-84.

4. *Id.* at 683.

5. *Id.* at 683.

6. *Id.* at 683-84; *see* N.C. GEN. STAT. § 15A-2000(b) (1999) ("If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment.").

was denied.[7] He then appealed the mistrial order and the denial of the double jeopardy motion to the Supreme Court of North Carolina.[8] The court affirmed the mistrial, holding that the conduct of the jury satisfied the manifest necessity standard, and that the coercion of Lytle by other jurors was sufficient, on its own, for a declaration of mistrial.[9]

Sanders then filed a petition for federal habeas corpus relief.[10] The magistrate judge recommended denying relief and the district court followed the recommendation of the magistrate.[11] Sanders appealed the denial of his habeas petition to the United States Court of Appeals for the Fourth Circuit.[12] Sanders raised the following arguments: (1) "strict scrutiny" was the proper standard of review for his mistrial order;[13] (2) the foundation upon which the declaration of mistrial was based was insufficient;[14] and (3) the trial court acted precipitously in granting a mistrial.[15]

II. Holding

The Fourth Circuit rejected Sanders's double jeopardy argument, rejected his proposed standard of review for declarations of mistrial favorable to the State, and dismissed his appeal.[16]

III. Analysis / Application in Virginia

A. Manifest Necessity Standard of Review for Mistrial Declarations Favorable to the State

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb."[17] The application of the Double Jeopardy Clause generally allows the state only one opportunity to compel a defendant to stand trial for the same offense and gives the defendant the right not to face repeated

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7. *Sanders*, 230 F.3d at 684.

8. *Id.*

9. State v. Sanders (Sanders III), 496 S.E.2d 568, 575-77 (N.C. 1998); *see Sanders*, 230 F.3d at 684.

10. *Sanders*, 230 F.3d at 685.

11. *Id.*

12. *Id.*

13. *Id.* at 687.

14. *Id.* at 687-88.

15. *Id.* at 688.

16. *Id.*

17. U.S. CONST. amend. V. This provision is made applicable to the states through the Fourteenth Amendment. *See Sanders*, 230 F.3d at 685; *see also* Benton v. Maryland, 395 U.S. 784, 793-944 (1969) (discussing the application of the Double Jeopardy Clause in state criminal cases).

prosecutions for the same offense.[18] However, there are times when retrials are permitted.[19] If a defendant acquiesces in a declaration of mistrial, the prosecution is only barred from a retrial if it has engaged in conduct intended to invoke the defendant's acquiescence.[20] Under *Wade v. Hunter*,[21] a defendant who opposes a motion for mistrial may not be retried unless manifest necessity requires the declaration of mistrial or if failure to grant the mistrial would thwart the ends of justice.[22]

The Fourth Circuit identified the manifest necessity standard and explained that the application of that standard depends upon the facts before the trial court.[23] The court described a continuum between frivolous requests by prosecutors in order to have additional time to prepare a case and situations in which juries are unable to reach verdicts.[24] The court found that because the facts of each trial are unique, great deference is afforded to the trial court's determination.[25] The court explained that reviewing courts have an affirmative obligation to ensure that manifest necessity existed to support the declaration of mistrial.[26] The Fourth Circuit further determined that the trial court's decision may be overturned on appeal only if there was an abuse of discretion in granting the mistrial.[27]

B. AEDPA Limits the Scope of Federal Review

Having initially discussed the general standard of review for declarations of mistrial, the Fourth Circuit determined that reviewing federal courts must apply a different standard.[28] The Fourth Circuit held that under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"),[29]

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18. *Sanders*, 230 F.3d at 685.

19. *Id.*

20. *Id.*

21. 336 U.S. 684 (1949).

22. Wade v. Hunter, 336 U.S. 684, 690 (1949) (holding that defendant who opposes mistrial may not be retried unless manifest necessity or the ends of justice require new trial). The court in *Sanders* cites the opinion of Justice Story in *United States v. Perez* for the proposition that, when a defendant opposes the declaration of mistrial, only manifest necessity or the ends of justice should compel the defendant to again be tried for that offense. *Sanders*, 230 F.3d at 685; *see* United States v. Perez, 22 U.S. 579, 580 (1824) (cautioning that, "in capital cases especially, Courts should be extremely careful how they interfere with any of the chances of life, in favour of the prisoner").

23. *Sanders*, 230 F.3d at 685.

24. *Id.* at 685-86.

25. *Id.* at 686.

26. *Id.*

27. *Id.*

28. *Id.*

29. Anti-Terrorism and Effective Death Penalty Act, Pub. L. No. 104-132, § 107(a), 110 Stat. 1214, 1221 (1996) (codified as amended at 28 U.S.C. § 2261 (2000)).

federal review of the decision of the Supreme Court of North Carolina's application of the manifest necessity standard was limited to deciding whether the court's decision to uphold the mistrial was contrary to, or an unreasonable application of, clearly established federal law.[30] Thus, the Fourth Circuit limited its review to an examination of whether the Supreme Court of North Carolina had applied the manifest necessity standard of review in a manner consistent with federal law.[31] The Fourth Circuit explained that its review was not an evaluation of whether the Fourth Circuit would reach a different conclusion from the Supreme Court of North Carolina, only whether the Supreme Court of North Carolina ruled unreasonably in determining that manifest necessity existed.[32]

In evaluating the reasonableness of the ruling of the Supreme Court of North Carolina, the Fourth Circuit rejected Sanders's contention that, because retrial allows the State another opportunity to seek the death penalty, strict scrutiny should attach to declarations of mistrial that favor the State.[33] The court noted that retrial may be barred when the prosecution acts to subvert the protections of the Double Jeopardy Clause. However, the court found no evidence that the prosecution had any role in the circumstances leading to the declaration of a mistrial.[34]

The court next rejected Sanders's contention that the events upon which the motion for mistrial was based were insufficient to support the granting of the motion.[35] Sanders argued that after each instance of juror misconduct was brought to the attention of the court, the court instructed the jurors not to consider the misconduct in the deliberations.[36] Sanders's appeal maintained that the record did not demonstrate that jurors failed to obey the instructions to disregard previous misconduct.[37] The court did not hold that any single incident alone was enough to justify a mistrial, but

30. *Sanders*, 230 F.3d at 686. In *Williams v. Taylor*, Justice O'Connor explained in her opinion that a state court decision is "contrary to" clearly established federal law if the state court arrives at a "conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000) (O'Connor, J., concurring) (holding, per Justice O'Connor, that AEDPA placed new constraint on power of federal habeas court to grant state prisoner's application for writ of habeas corpus with respect to claims adjudicated on merits in state court). A state court decision is an unreasonable application of federal law "if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.*

31. *Sanders*, 230 F.3d at 686.

32. *Id.* at 686-87.

33. *Id.* at 687.

34. *Id.*

35. *Id.* at 688.

36. *Id.* at 686-88.

37. *Id.* at 688.

emphasized that the pattern of misconduct in the aggregate was a reasonable basis for the Supreme Court of North Carolina to determine that manifest necessity required the declaration of mistrial.[38]

Finally, the court rejected Sanders's claim that the declaration of mistrial was made in haste. The Fourth Circuit found that the evidence clearly indicated the trial court's reluctance to declare a mistrial. According to the Fourth Circuit, only after the jury had clearly lost its way did the trial court grant the motion for mistrial.[39]

C. Application in Virginia Capital Cases

The case raises several issues for capital defendants in Virginia. One question left unanswered by *Sanders* is how the provisions of the Double Jeopardy Clause apply within the system of bifurcated capital trials.[40] Sanders will face a fourth jury to determine his sentence for a capital crime of which he was convicted in 1985. It has been fifteen years since his conviction and North Carolina has had four opportunities to impose the death sentence on Stanley Sanders. The manifest necessity standard for the declaration of mistrial gives the trial court wide discretion subject only to the deferential "abuse of discretion" standard of review. This hands-off state appellate review, coupled with the narrow scope of federal review under AEDPA, raises an almost insurmountable obstacle to overturning a declaration of mistrial absent actions on the part of the prosecution to precipitate the motion for mistrial.

Virginia Code Section 19.2-264.4.E[41] is very similar to the North Carolina statute implicated in *Sanders*.[42] Each statute provides that the trial judge *shall* impose a sentence of life imprisonment if the jury cannot reach a unanimous verdict. The jury in *Sanders* did not reach a verdict. If the failure to reach a verdict resulted from disagreements among jurors who conscientiously performed their duty, the result was a true hung jury. If the jury was unable to reach a decision because juror misconduct prevented the jury from arriving at a verdict, then it is not a hung jury. Outside the context of capital cases, the distinction is not critical because in either case

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38. *Id.*

39. *Id.*

40. *See* Bullington v. Missouri, 451 U.S. 430, 446 (1981) (holding that "[b]ecause the sentencing proceeding at . . . trial was like the trial on the question of guilt or innocence, the protection afforded by the Double Jeopardy Clause to one acquitted by a jury also is available to him, with respect to the death penalty, at his retrial").

41. VA. CODE ANN. § 19.2-264.4.E (Michie 2000). The Virginia Code requires that "[I]n the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life." *Id.*

42. *See* N.C. GEN. STAT. § 15A-2000(b). The North Carolina statute mandates that "[I]f the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment." *Id.*

discharge of the jury is manifestly necessary. A mistrial will be granted and retrial permitted. However, the distinction is critical in the context of capital sentencing. Under the North Carolina statute (and Virginia Code Section 19.2-264.4.E) a true hung jury requires the judge to impose a life sentence.[43] The statute alters the general rule permitting retrial after mistrial. The statute does not apply in the case of a jury discharged for misconduct. Juror misconduct compels the judge to declare a mistrial and permits retrial.

Defense counsel must be aware of the distinction between a discharge for failure to agree, which is a true hung jury, and a discharge for misconduct. When confronted by this situation, counsel must characterize the result as a hung jury and convince the court to impose the sentence of life imprisonment as required by Section 19.2-264.4.E. Characterizing the result as a true hung jury is crucial to prevent the Commonwealth from having another opportunity to convince a jury to return a verdict of death.

The underlying problem that led to the jury misconduct was the jury's concern that if a sentence of life imprisonment was imposed, Sanders would be released from prison after serving only a short time. The now mandated "life means life" instruction for capital crimes committed on or after January 1, 1995, allows the jury to make a more informed sentencing decision.[44] A well-informed jury, with the knowledge that a defendant sentenced to life imprisonment is ineligible for parole, will be less likely to engage in the type of intimidation of non-death jurors testified to by Juror Lytle.

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43. *See id.*; VA. CODE ANN. § 19.2-264.4.E.

44. *See* VA. CODE ANN. § 19.2-264.4.A (Michie 2000) (requiring that "[U]pon request of the defendant, a jury shall be instructed that for all Class 1 felony offenses committed after January 1, 1995, a defendant shall not be eligible for parole if sentenced to imprisonment for life"); *see also* Simmons v. South Carolina, 512 U.S. 154, 171 (1994) (holding that when the State introduces evidence of a capital defendant's future dangerousness the defendant is entitled to inform the jury of the defendant's parole ineligibility); Yarbrough v. Commonwealth, 519 S.E.2d 602, 616 (Va. 1999) (holding that in the penalty phase of a trial where the defendant has been convicted of capital murder the trial court shall instruct the jury that the words "imprisonment for life" mean "imprisonment for life without possibility of parole") (internal citations omitted).