

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

MSC No. _____
COA No. 279017
LC No. 05-3228-01
Prior MSC No.135149
Prior COA No. 269198
Prior MSC No.130784

v

ALEXANDER ACEVAL,
Defendant-Appellant.

_____ /

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_____ /

DEFENDANT-APPELLANT ALEXANDER ACEVAL'S

APPLICATION FOR LEAVE TO APPEAL

FROM COURT OF APPEALS DECISION OF FEBRUARY 5, 2009

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COUNSEL OF HIS CHOICE UNDER *UNITED STATES V
GONZALEZ-LOPEZ*, 548 US 140;126 S CT 2557; 165 L ED 409
(2006),”**

**WHERE SECOND TRIAL COURT'S UNJUSTIFIED EJECTION OF
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**COA’S 2-5-09 PUBLISHED OPINION ERRONEOUSLY ANSWERS ‘NO’ TO
MSC 3-19-09 REMAND ISSUE OF**

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WHERE THE DOUBLE JEOPARDY CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS PRECLUDED THE PROSECUTOR FROM RETRYING DEFENDANT-APPELLANT WHERE AN INTENTIONAL PROSECUTORIAL AND JUDICIAL CRIMINAL MISCONDUCT CONSPIRACY OF A DEGREE UNPRECEDENTED IN MICHIGAN OR FEDERAL JUDICIAL HISTORY SOUGHT UNFAIR CONVICTION OF DEFENDANT-APPELLANT AND SUBVERTED THE “MISTRIAL” PROCESS SO RELIANT UPON JUDICIAL INTEGRITY

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STATEMENT OF THE COURT'S JURISDICTION

The original Delayed Application For Leave To Appeal from the subject
criminal conviction was timely filed 6-29-07 under MCR 7.205(F)(3) with the Court of

Appeals as defendant-appellant was sentenced in the Wayne County Circuit Court by Judge Vera Massey Jones on 6-29-06 for possession of controlled substance with intent to deliver over 1000 grams, MCL 333.7401.

The Court of Appeals denied the Application 10-5-07. An Application For Leave To Appeal to the Supreme Court was timely filed 10-29-07 under applicable court rule.

The Michigan Supreme court issued its Order 3-19-08 remanding, as on leave granted, this matter to the Court of Appeals, and a Motion For Re-Hearing of said Order brought by the plaintiff-appellee prosecution was denied on 6-23-08.

The Court of Appeals heard the matter and issued its published opinion February 5, 2009. This Application For Leave To Appeal is timely filed within the 56 days permitted, to 4-2-09, for filing of same.

It should be noted that this matter was previously subject of interlocutory appeals by present defendant-appellant, in the Court of Appeals, No. 269198, and in this Honorable Court, MSC No.130784. Transcripts of the lower court proceedings were filed in support of the interlocutory appeals and are sought to be included as part of the record on appeal in this matter.

STATEMENT OF QUESTIONS PRESENTED

I.

WHETHER COA'S 2-5-09 PUBLISHED OPINION ERRONEOUSLY ANSWERS
'NO' TO MSC 3-19-09 REMAND ISSUE OF

“WHETHER THE DEFENDANT WAS DENIED THE RIGHT TO
COUNSEL OF HIS CHOICE UNDER *UNITED STATES V*
GONZALEZ-LOPEZ, 548 US 140; 126 S CT 2557; 165 L ED 409
(2006),”

WHERE SECOND TRIAL COURT'S UNJUSTIFIED EJECTION OF RETAINED
COUNSEL DENIED SIXTH AMENDMENT RIGHT TO COUNSEL AND RIGHT
TO PRESENT DEFENSE AND INVALIDATED DEFENDANT-APPELLANT'S
PLEA-BASED SECOND TRIAL CONVICTION

The Defendant-Appellant Says “Yes.”

The Plaintiff-Appellee Says “No.”

The Trial Court Has Not Ruled Upon This Issue Because Remand Was Denied
By the COA

The Court Of Appeals Said “No.”

The Supreme Court Remanded This Issue For Further Consideration In Light of
US v Gonzalez-Lopez

II.

WHETHER COA'S 2-5-09 PUBLISHED OPINION ERRONEOUSLY ANSWERS
'NO' TO MSC 3-19-09 REMAND ISSUE OF

“WHETHER THE PROSECUTION'S ACQUIESCENCE IN THE
PRESENTATION OF PERJURED TESTIMONY AMOUNTS RO
MISCONDUCT THAT DEPRIVED THE DEFENDANT OF DUE
PROCESS SUCH THAT RETRIAL SHOULD BE BARRED,”

WHERE THE DOUBLE JEOPARDY CLAUSES OF THE STATE AND FEDERAL
CONSTITUTIONS PRECLUDED THE PROSECUTOR FROM RETRYING
DEFENDANT-APPELLANT WHERE AN INTENTIONAL PROSECUTORIAL
AND JUDICIAL CRIMINAL MISCONDUCT CONSPIRACY OF A DEGREE
UNPRECEDENTED IN MICHIGAN OR FEDERAL JUDICIAL HISTORY

SOUGHT UNFAIR CONVICTION OF DEFENDANT-APPELLANT AND
SUBVERTED THE “MISTRIAL” PROCESS SO RELIANT UPON JUDICIAL
INTEGRITY

- A. Whether Uniqueness Of Prosecutor And Judge Knowingly
Committing *Criminal* Misconduct Presents Questions Of First
Impression Beyond Conventional Double Jeopardy Analysis That
Exemplify Policy Behind Prohibition.
- B. Whether Seminal Case Law Assigning Critical Role To Trial Court
Completely Violated Where Trial Judge Corruptly Declares Mistrial
- C. Whether The COA Opinion, With Numerous Instances Of
From-Day-One Guileful, Criminal, And Secretive Behavior To Construe,
Willfully Ignores That The Prosecutor Committed The Misconduct For
The Purpose of Avoiding/Preventing Acquittal
- D. Whether Federal And State Case Law Bars Retrial
Under These Circumstances.

The Defendant-Appellant Says “Yes.”

The Plaintiff-Appellee Says “No.”

The Trial Court Has Not Ruled Upon This Issue Because Remand Was Denied
By The Court of Appeals

The Court Of Appeals Said “No.”

The Supreme Court Impliedly Remanded This Issue For Further Consideration

III.

WHETHER THE COA’S 2-5-09 PUBLISHED OPINION DECLARING THE
SUBJECT PROSECUTOR’S AND TRIAL COURT’S CONDUCT “DISGRACEFUL,”
“REPREHENSIBLE,” AND “OPPROBIOUS, AND SAYING THAT “DEFENDANT
WAS DENIED DUE PROCESS BECAUSE OF THE TRIAL COURT [SIC] AND
PROSECUTOR’S MISCONDUCT RAISES A NEWLY PREMISED ISSUE OF:

‘WHETHER THE NUMEROUS DUE PROCESS VIOLATIONS AND
MISCONDUCT IRREPARABLY DENIED DEFENDANT HIS RIGHT TO A
FAIR TRIAL AND ANY POSSIBILITY OF PREVAILING IN ANY
SUBSEQUENT TRIAL”

The Defendant-Appellant Says “Yes.”

The Plaintiff-Appellee Says “No.”

The Trial Court Has Not Ruled Upon This Issue Because Remand Was Denied

By The Court of Appeals
The Court Of Appeals Said “No.”
The Supreme Court Has Not Decided This Question Because The Issue Is Newly
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