



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-10-00078-CR

EX PARTE: ROY LEE HILL

On Appeal from the 76th Judicial District Court
Titus County, Texas
Trial Court No. 15435

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Roy Lee Hill appeals the denial of his application for writ of habeas corpus. He contends that his right to be free from double jeopardy was violated after the trial court previously declared a mistrial which allowed the State to amend its indictment and prosecute him. Because the court's mistrial was declared prior to the jury panel being sworn, we affirm the trial court's judgment.

The Fifth Amendment to the United States Constitution and Article I, Section 14 of the Texas Constitution prohibit double jeopardy and protect individuals from being tried twice for the same offense, possibly receiving double punishments. *Albernaz v. United States*, 450 U.S. 333, 343 (1981); *Illinois v. Vitale*, 447 U.S. 410, 415 (1980); *Stephens v. State*, 806 S.W.2d 812, 814–15 (Tex. Crim. App. 1990). A prerequisite to the implication of double-jeopardy protections is the requirement that “jeopardy must have attached initially.” *State v. Moreno*, 294 S.W.3d 594, 597 (Tex. Crim. App. 2009). In a jury trial, jeopardy attaches only when a jury is impaneled and sworn. *Id.*; *Ex parte Preston*, 833 S.W.2d 515, 517 (Tex. Crim. App. 1992). Once the panel is sworn, a defendant has a constitutional right to have his guilt or innocence decided by that particular jury. *Hubbard v. State*, 798 S.W.2d 798, 799–800 (Tex. Crim. App. 1990) (citing *Torres v. State*, 614 S.W.2d 436, 441 (Tex. Crim. App. 1981)). Because the jury panel in this case was not sworn, jeopardy did not attach.

Despite the fact that a jury was not sworn, Hill argues that the trial court’s declaration of mistrial violated double jeopardy because no manifest necessity existed to justify the mistrial.¹ As stated in *Dinkins v. State*, “[t]he doctrine of manifest necessity is inextricably fused with the concept of jeopardy.” 894 S.W.2d 330, 343 (Tex. Crim. App. 1995). We need not indulge Hill’s contention of lack of manifest necessity since “[j]eopardy principles pose no bar to declaration of a mistrial when the jury has not been impaneled or sworn.” *Reese v. State*, 936 S.W.2d 327, 328 (Tex. App.—Tyler 1996, pet. ref’d) (citing *Dinkins*, 894 S.W.2d at 343). In other words, because jeopardy did not attach, the trial court was not required to have manifest necessity to declare a mistrial to avoid double jeopardy.

We affirm the trial court’s judgment.

Bailey C. Moseley
Justice

Date Submitted: August 9, 2010
Date Decided: August 10, 2010

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¹Double jeopardy does not forbid multiple trials of a single criminal charge if the first trial resulted in a mistrial that was justified under the manifest necessity doctrine. *Arizona v. Washington*, 434 U.S. 497, 505–06 (1978).