No.

IN THE

SUPREME COURT OF THE UNITED STATES

LOGAN BROOKS DRINKARD,
Petitioner,

v.

MARK S. INCH,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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COUNSEL FOR THE PETITIONER

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12543 Non-Argument Calendar

D.C. Docket No. 3:17-cv-00338-LC-MJF

LOGAN DRINKARD,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court for the

Northern District of Florida

(February 1, 2021)

Before MARTIN, BRANCH, and EDMONDSON, Circuit Judges.

PER CURIAM:

Logan Drinkard, a Florida probationer proceeding with counsel, appeals the district court's denial of his amended 28 U.S.C. § 2254 petition for writ of habeas corpus. Drinkard seeks to vacate his 2013 Florida conviction for manslaughter. No reversible error has been shown; we affirm.

Drinkard's conviction stems from a collision between Drinkard's car and another vehicle, which resulted in the death of a passenger in that other vehicle. The state charged Drinkard with (1) vehicular homicide under Fla. Stat. § 782.071(1)(a) (Count 1); (2) manslaughter under Fla. Stat. § 782.07 (Count 2); and (3) racing on a highway under Fla Stat. § 316.191(2)(a) (Count 3). At a pre-trial hearing, the state clarified

that Count 1 and Count 2 were based on the same set of facts.

Following a trial, the jury found Drinkard (1) guilty of reckless driving -- a lesser-included offense of vehicular homicide, (2) guilty of manslaughter, and (3) not guilty of racing on a highway.

Drinkard moved to arrest the judgment, seeking to vacate the jury's verdict for manslaughter. Drinkard argued that -- because the jury acquitted him of vehicular homicide in Count 1 and because vehicular homicide is a lesser-included offense of manslaughter[1] -- constitutional double jeopardy principles prohibited him from being convicted and sentenced for

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1 *See Burford v. State*, 8 So. 3d 478, 480 (Fla. Dist. Ct. App. 2009) ("Vehicular homicide is a lesser included offense of manslaughter by culpable negligence.").

manslaughter.[2] Drinkard focused on the order in which the offenses were charged and, thus, the order in which the verdict was announced. In other words, Drinkard asserted that jeopardy attached as soon as the jury announced its verdict for Count 1 and thus barred Drinkard from being convicted for manslaughter in Count 2. Following a hearing on the motion, the state court denied relief.

At sentencing, the parties agreed -- given Drinkard's conviction for manslaughter -- that double jeopardy concerns barred Drinkard from also being convicted or sentenced on the reckless driving offense. The state trial court thus adjudicated Drinkard guilty only of manslaughter and sentenced Drinkard to 10 years' imprisonment.

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2 Drinkard also challenged the jury's verdict as legally inconsistent but later abandoned that claim.

Drinkard appealed his conviction and sentence to the state appellate court. In pertinent part, Drinkard challenged the trial court's denial of his motion for arrest of judgment and reasserted his double jeopardy argument. Following oral argument, the state appellate court affirmed Drinkard's manslaughter conviction without discussion.[3]

The Florida Supreme Court denied rehearing and certification without discussion. The United States Supreme Court later denied *certiorari*.

Drinkard timely filed the counseled section 2254 federal habeas petition at issue in this appeal. Drinkard again challenged his manslaughter

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3 The state appellate court also vacated Drinkard's sentence and remanded for resentencing for reasons unrelated to this appeal. Drinkard was later resentenced to 10 years' probation with a special condition that he be confined to the county jail for the first year of probation.

conviction as unlawful on double-jeopardy grounds in the light of his acquittal on the lesser-included offense of vehicular homicide. The district court denied Drinkard's motion on the merits and denied Drinkard a certificate of appealability ("COA").

A single judge of this Court granted a COA on this issue: "Whether the Florida courts unreasonably applied clearly established federal law by affirming Mr. Drinkard's convictions of both manslaughter and reckless driving, where there was one death, in light of double jeopardy principles."

As an initial matter, we note that the issue as framed in the COA mischaracterizes the nature of Drinkard's double jeopardy claim. Accordingly -- in the light of the record, including the pertinent pleadings and decisions of the state courts and the district court -- we amend the COA to read this way: "Whether the

Florida courts unreasonably applied clearly established federal law in denying Mr. Drinkard's claim that constitutional double jeopardy principles prohibited him from being convicted or sentenced for manslaughter in the light of the jury's acquittal -- in the same criminal prosecution -- on the lesser-included offense of vehicular homicide." For background, *see Murray v. United States*, 145 F.3d 1249, 1251 (11th Cir. 1998) ("Although we will not decide any issue not specified in the COA, we will construe the issue specification in light of the pleadings and other parts of the record."); 11th Cir. R. 27-1(g) (noting the merits panel may alter, amend, or vacate a motions ruling entered by a single judge or panel). Because both parties have briefed the issue reflected in the amended COA, we now address the merits.

When reviewing the district court's denial of a

section 2254 habeas petition, "we review questions of law and mixed questions of law and fact *de novo*, and findings of fact for clear error." *See Rambaran v. Sec'y, Dep't of Corr.*, 821 F.3d 1325, 1330 (11th Cir. 2016).

When the merits of a section 2254 habeas claim have been already adjudicated in state court, our review is highly deferential to the state court. *See Crowe v. Hall*, 490 F.3d 840, 844 (11th Cir. 2007). To obtain habeas relief, a petitioner must show that the state court's ruling "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or . . . was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *See* 28 U.S.C. 2254(d); *Crowe*, 490 F.3d at 844.

A state court decision is "contrary to" established

Supreme Court precedent (1) "if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law"; or (2) "if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). A state court's decision constitutes an unreasonable application of Supreme Court precedent "if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id*. at 413.

Where -- as here -- the state court's decision offers no explanation, "a habeas court must determine what arguments or theories supported or . . . could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists

could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme] Court." *See Harrington v. Richter*, 562 U.S. 86, 102 (2011).

The Double Jeopardy Clause provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The Double Jeopardy Clause offers three basic protections: (1) "against a second prosecution for the same offense after acquittal", (2) "against a second prosecution for the same offense after conviction", and (3) "against multiple punishments for the same offense." *Brown v. Ohio*, 432 U.S. 161, 165 (1977). Drinkard's double-jeopardy claim implicates only the first of these three protections.

A greater and a lesser-included offense constitute the "same offense" for purposes of double

jeopardy. *Id*. at 168-69. Thus, the Supreme Court has determined that "the Double Jeopardy Clause prohibits prosecution of a defendant for a greater offense when he has already been tried and acquitted or convicted on the lesser included offense." *See Ohio v. Johnson*, 467 U.S. 493, 501 (1984) (citing *Brown*).

Drinkard argues that the state court's denial of his double-jeopardy claim is contrary to and an unreasonable application of the Supreme Court's decisions in *Brown* and *Johnson*. We disagree. As observed by the district court, Drinkard's claim raises essentially the same double-jeopardy argument rejected by the Supreme Court in *Johnson*.

In *Johnson*, the Supreme Court addressed the application of the Double Jeopardy Clause in the context of a multicount indictment charging the defendant with murder, involuntary manslaughter,

aggravated robbery, and grand theft. 467 U.S. at 495. The defendant pleaded guilty to the lesser-included offenses of involuntary manslaughter and grand theft and pleaded not guilty to the greater offenses of murder and aggravated robbery. *Id.* at 496. The trial court (over the state's objection) accepted the defendant's guilty pleas and sentenced the defendant to a term of imprisonment for those offenses. *Id.* The trial court then granted the defendant's motion to dismiss the remaining counts on double-jeopardy grounds. *Id.*

The Supreme Court reversed. *Id.* at 502. In pertinent part, the Supreme Court rejected the argument that the defendant's guilty pleas on the two lesser-included offenses barred the state's continued prosecution on the two greater offenses. 467 U.S. at 500-01. The Supreme Court explained its ruling this

way:

> The answer to this contention seems obvious to us. Respondent was indicted on four related charges growing out of a murder and robbery. The grand jury returned a single indictment, and all four charges were embraced within a single prosecution. Respondent's argument is apparently based on the assumption that trial proceedings, like amoebae, are capable of being infinitely subdivided, so that a determination of guilt and punishment on one count of a multicount indictment immediately raises a double jeopardy bar to continued prosecution on any remaining counts that are greater or lesser included offenses of the charge just

concluded. We have never held that, and decline to hold it now.

Id. at 501.

Like the defendant in *Johnson*, Drinkard was charged in a single multicount indictment and was subjected to a single prosecution. Nevertheless -- like the defendant in *Johnson* -- Drinkard sought to subdivide his prosecution so that an acquittal on a lesser-included offense would operate as an immediate double jeopardy bar to his conviction on the greater offense. Given the Supreme Court's rejection of a substantially similar argument in Johnson, Drinkard cannot show that the state court's denial of Drinkard's double-jeopardy claim was either contrary to, or an unreasonable application of, clearly established Supreme Court precedent.

We affirm the district court's denial of

Drinkard's 28 U.S.C. § 2254 petition.

AFFIRMED.

Clerk Number 5711CF001806A-B.

Arrest Date12/30/2011 Agency # 11049980 FHP

Race: W Sex: M DOB: 09/13/1990 SS#:[redacted]

1) VEHICULAR HOMICIDE

2) MANSLAUGHTER

3) RACING ON HIGHWAY

IN THE NAME AND BY THE AUTHORITY OF

THE STATE OF FLORIDA

IN THE CIRCUIT COURT OF SANTA ROSA

COUNTY, FLORIDA

STATE OF FLORIDA

vs

LOGAN BROOKS DRINKARD,

Defendant

WILLIAM EDDINS, STATE ATTORNEY FOR THE FIRST JUDICIAL CIRCUIT OF FLORIDA, PROSECUTING FOR THE FIRST CIRCUIT OF

FLORIDA, CHARGES THAT LOGAN BROOKS DRINKARD, on or about November 26,2011, at and in Santa Rosa County, Florida, did unlawfully kill a human being, to-wit: Germaine Bindi by his operation of a motor vehicle, to-wit: Ford Mustang, in a reckless manner likely to cause the death of, or great bodily harm to, another, in violation of Section 782.071(1)(a), Florida Statutes. (F2-L7)

COUNT 2: AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT LOGAN BROOKS DRINKARD, on or about November 26, 2011, at and in Santa Rosa County, Florida, did, by his act, procurement or culpable negligence, kill Germaine Bindi, a human being, by driving at a high rate of speed and/or racing another

vehicle and/or weaving in and out of traffic and/or driving recklessly, in violation of Section 782.07, Florida Statutes. (F2-L7)

COUNT 3: AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT LOGAN BROOKS DRINKARD, on or about November 26, 2011, at and in Santa Rosa County, Florida, did drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot, in violation of Section 316.191 (2)(a), Florida Statutes. (M-1)

STATE OF FLORIDA

COUNTY OF SANTA ROSA

Before me personally appeared the undersigned designated Assistant State Attorney for the First Judicial Circuit of Florida, being personally known to me, and who first being duly sworn, says that the allegations set forth in the foregoing information are based on facts that have been sworn as true, and which if true, would constitute the offense there charged, that said Assistant State Attorney has received testimony under oath from a material witness or witnesses for the offense and that this prosecution is instituted in good faith.

[signature of Jennie Kinsey]

ASSISTANT STATE ATTORNEY

JENNIE KINSEY

PO BOX 12726

PENSACOLA, FL 32591-2726

PHONE NUMBER: (850) 595-4611

FLORIDA BAR NO.: 0307350

Sworn to and subscribed before me this 12th day of January, 2012.

[notary public stamp image providing:

Notary Public, State of Florida

BRANDA E. WRIGHT

MY COMMISSION # EE 155855

EXPIRES: April 27, 2016

Bonded Thru Notary Public Underwriters]

[signature of Branda E. Wright]

Notary Public

Excerpt from the transcript of the

March 20, 2012, pretrial hearing:

MS. KINSEY [the prosecutor]: And if it helps, Mr. Wade, as an officer of the court, I can tell you that the facts of the reckless driving for Count 1 and Count 2 are the same set of facts, which is what I think you were trying to determine.

MR. WADE [defense counsel for the Petitioner]: So it's the State's representation then that the factual basis of both would be the same?

MS. KINSEY: Yes. It's based on the same set of facts –

MR. WADE: Okay.

MS. KINSEY: – which I think will clear a lot up for you. And I have no problem with that, announcing that. And ultimately, if he is convicted of both counts,

vehicular homicide and manslaughter, we would only be able to proceed to sentencing on one of the two cases.

THE COURT: Yeah. That's correct. It's one death right?

MS. KINSEY: Yes, sir.

THE COURT: Right. He can't be convicted of both.

MS. KINSEY: Right.

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA

Case Number: 2011 CF 001806 A

Division: B

STATE OF FLORIDA

Plaintiff,

v.

LOGAN BROOKS DRINKARD,

Defendant.

_____/

VERDICT

We the jury, find the defendant, LOGAN BROOKS DRINKARD:

As to Count 1 (please check only one):

___ Guilty of Vehicular Homicide, as charged in the Information.

_✓_ Guilty of Reckless Driving, a lesser included

offense.

___ Not Guilty

As to Count 2 (please check only one):

_✓_ Guilty of Manslaughter, as charged in the Information.

___ Not Guilty

As to Count 3 (please check one):

___ Guilty of Racing on a Highway, as charged in the Information.

_✓_ Not Guilty

So say we all,

[signature of foreperson]

Foreperson Signature

[foreperson printed name]

Foreperson Print Name

Date: 6/07/13