

24-6318

NO. ____

IN THE
SUPREME COURT OF THE UNITED STATES

MARCUS CROWDER,

Petitioner,

v.

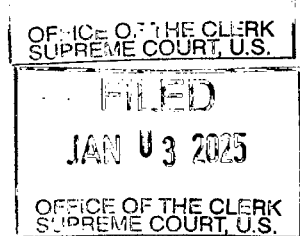
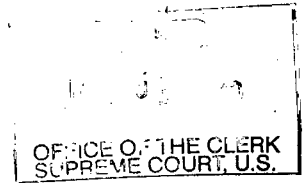
STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court, State of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the state of Georgia violates the Fifth Amendment to the United States Constitution's Double Jeopardy Clause when it indicts in multiplicity offenses arising from a single act or transaction resulting in successive prosecutions.

Whether the Petitioner's not guilty verdict of a malice murder shooting death constitutes a final judgment of acquittal precluding the same fact issue from any further consideration.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

State of Georgia v. Crowder, No. 94-CR-1407- V, Rockdale County Georgia Superior Court. Judgment entered June 17, 1996.

Crowder v. State, No. S97A0671, Supreme Court of Georgia. Judgment entered September 22, 1997.

Crowder v. Warden, No. 2008-CV-262, Macon County Georgia Superior Court. Judgment entered July 16, 2010.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Marcus Crowder respectfully requests the issuance of a writ of certiorari to review the judgment of the Supreme Court, State of Georgia.

DECISION BELOW

The decision of the Supreme Court, State of Georgia is not published S25A0176, and is reproduced at Appendix B.

JURISDICTION

The Supreme Court, State of Georgia entered judgment on October, 22, 2024. *See* Appendix B. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendments;

(V) ...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; ...

(XIV) **Section One...** no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws:

O.C.G.A § 16-5-1; Murder; Malice Murder; Felony Murder; ...

- (a) A person commits the offense of murder when he unlawfully and with malice aforethought either express or implied causes the death of another human being.
- (b) Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.
- (c) A person commits the offense of murder, when in the commission of a felony, he or she causes the death of another human being irrespective of malice.

STATEMENT OF THE CASE

Petitioner, Mr. Crowder, was charged with, among other things, the malice and felony murder shooting death of Cleophus Ammons, under a single Georgia Statute. The jury returned an expressed verdict of not guilty on the malice murder shooting death of Ammons, however, returned a verdict of guilty of the felony murder shooting death in 1996.

Mr. Crowder challenged the judgment and verdict July 17, 2024, that found him guilty of the felony murder shooting death of Ammons pursuant to O.C.G.A. § 17-9-4 which states, "The judgment of a court having no jurisdiction of the person or subject matter, or void for any cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it." Mr. Crowder's motion clearly stated he was being twice put in jeopardy which voided the felony murder conviction and sentence.

The trial court denied Mr. Crowder's motion July 26, 2024, ruling that "the issue of double jeopardy does not preclude a defendant from prosecution for multiple crimes based on the same conduct", (Appendix A). This, in spite of Mr. Crowder's averment in his motion that he had been charged and convicted with the same crime based on the same conduct... twice. He then filed a timely notice of appeal to the Supreme Court of Georgia July, 2024.

On October 22, 2024, The Supreme Court of Georgia dismissed Mr. Crowder's appeal ruling that the parameters of O.C.G.A. § 17-9-4 was not the proper remedy for his motion.¹ In addition, the court parroted the trial court's ruling that under Georgia law, a defendant may face prosecution for multiple crimes based on the same conduct, essentially re-characterizing Mr. Crowder's motion.

Mr. Crowder filed his Petition for Writ of Certiorari JANUARY 1, 2025.

REASONS FOR GRANTING THE WRIT

The Court should grant Certiorari to clarify that Mr. Crowder is protected against a second prosecution for the same offense after acquittal.

The Fifth Amendment to the United States Constitution prohibits the government from prosecuting a defendant for the same offense twice. Indictments which charge multiple offenses arising from a single act or transaction can be seen as a form of double jeopardy, especially when the charges are closely related.

The Due Process Clause of the Fourteenth Amendment guarantees fundamental fairness in legal proceedings. Multiplicity indictments can undermine due process by overwhelming defendants with multiple charges making it difficult to mount an effective defense. This can lead to wrongful

¹ In doing so, the court ignored the plain language of O.C.G.A. § 17-9-4.

convictions and deprive defendants of their right to a fair trial.

Mr. Crowder was acquitted of "having committed the offense of *murder* for that the accused...did unlawfully...kill, murder, and cause the death of Cleophus Ammons, a human being by shooting him with a handgun.", in Count One. Count One specifically alleges "malice aforethought". Count Two alleges "during the commission of felonies.". It should be noted that the State's indictment did not cite any statute or subsection specifically, simply "Murder". "A multiplicitous indictment may improperly prejudice a jury by suggesting that a defendant has committed several crimes – not one." See *U.S. v. Smith*, 231 F.3d 800 (11th Cir. 2000). Also, it may induce the jury to reach an unwarranted compromise and acquit on less than all counts despite lingering doubt.

The Double Jeopardy Clause of the Fifth Amendment bars prosecution and punishment when the jury, having returned a verdict of not guilty on Count One, precluded the same offense, (*Murder*), or the same facts, (*kill, cause the death of Cleophus Ammons, by shooting him with a handgun*), from further adjudication.

For the purposes of double jeopardy, the two prosecutions, Count One and Two, involve the same statutory offense, (O.C.G.A. 16-5-1). The Double Jeopardy Clause "protects from a second prosecution for the same offense after acquittal." *North Carolina v. Pearce*, 385 U.S. 711 (1969). Where successive

prosecutions are at stake, the guarantee serves as "A Constitutional policy of finality for the defendant's benefit." *U.S. v. Jorn*, 400 U.S. 470 (1971). That policy protects the accused from attempts to re-litigate the facts underlying a prior acquittal. See *Ashe v. Swenson*, 397 U.S. 436 (1970). This Court endorsed the rule "where...a person has been tried and convicted for a crime which has various incidents included in it, he cannot be a second time tried for one of those incidents, without being twice put in jeopardy of the same offense." in *In re Neilsen*, 131 U.S. 179 at 188 (1889). Logically, the same holds true in acquittal.

Georgia is sidelining the Fifth Amendment by stacking an additional murder charge on a murder charge simply because the defendant has been charged with a felony in a separate criminal count on the same indictment. This is *not* two distinct elements or facts of the crime. Unless "each statute requires proof of an additional fact which the other does not", (*Morey v. Commonwealth*, 108 Mass. 433, 434 (1871)), the Double Jeopardy Clause prohibits successive prosecutions as well as cumulative punishments.²

The single rationally conceivable issue in dispute before the jury was whether Mr. Crowder had murdered, killed, and caused the death of Cleophus

² Oddly, Georgia merges the convictions and sentences on a conviction to avoid double jeopardy, however, does not apply the same operation of law on an acquittal.

Ammons, by shooting him with a handgun. The jury found that he did not. The federal rule of law, therefore, would make a second offense adjudication or prosecution for the murder, killing, and causing the death of Ammons by shooting him with a handgun wholly impermissible.

As was noted in *Brown v. Ohio*, 432 U.S. 161 at FN6 (1977):

"The Blockburger test is not the only standard for determining whether successive prosecutions impermissibly involve the same offense. Even if the two offenses are sufficiently different to permit imposition of consecutive sentences, successive prosecutions will be barred in some circumstances where the second prosecution requires re-litigation of the factual issues already resolved by the first."

In the instant case, Mr. Crowder was acquitted of "Having committed the offense of *murder* for that the said accused person in the county aforesaid, on the 22nd day of August, 1994, did unlawfully then and there with malice of forethought, did kill, murder, and cause the death of Cleophus Ammons, a human being by shooting him, the said Cleophus Ammons with a handgun." At the moment of acquittal of this charge, (Count One), Mr. Crowder was collaterally estopped by the embodiment of the Double Jeopardy Clause and barred from further adjudication or prosecutions of charges involving the same elements or facts, as they had already been resolved.

"...it is well established that whether an acquittal has occurred for the purposes of the Double Jeopardy Clause is a question of federal, not state, law. Again, an acquittal occurs when there has been a ruling relating to the ultimate question of guilt or innocence. And labels - including those provided by state law - do not control our analysis in this context. Thus, it is not dispositive whether a factfinder incanted the word 'acquit'; instead, an acquittal has occurred if the factfinder acted on its view that the prosecution had failed to prove its case. Because of the focus on substance over labels, a State's characterization, as a matter of double Jeopardy law, of a ruling is not binding on us." *McElrath v. Georgia*, 144 S. Ct. 651, at 659-60 (2024) (internal quotation marks and citations omitted).

The United States Constitution serves as a fundamental contract between the government and its citizens. This contract outlines the terms of governance, including the rights and liberties guaranteed to the people. As the ultimate arbiter of the Constitution, the Supreme Court is entrusted with the responsibility of ensuring that these terms are upheld and that the government remains accountable to the people.

The Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units.

CONCLUSION

Because the Georgia Courts are not properly applying the protection of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, this Court's review is warranted.

Respectfully submitted,

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January 1, 2025