

NO. 24-6318

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 REHEARING

MARCUS CROWDER
Pro Se
GDC No. 623937
Telfair State Prison
210 Longbridge Road
Helena, GA 31037

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MARCUS CROWDER	*	
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v.	*	Case No. 24-6318
	*	
STATE OF GEORGIA	*	
	*	
	*	
<i>Petitioner</i>		
<i>Respondent</i>		

PETITION FOR REHEARING

To the Honorable Chief Justice and Associate Justices:

Petitioner respectfully submits this urgent Petition for Rehearing to address egregious constitutional violations that have resulted in a fundamental miscarriage of justice, including the Georgia Supreme Court's acknowledgment of erroneous evidentiary rulings that prejudiced the jury.

This case presents a watershed opportunity for this court to: (1) Reinforce the inviolability of acquittals under the Double Jeopardy Clause; (2) Condemn prosecutorial overreach that subverts jury verdicts; and, (3) Halt the admission of fabricated evidence that poisons the well of justice.

Mr. Crowder presents the following grounds that are limited to intervening circumstances of substantial or controlling effect:

- I. THE JURY'S EXPLICIT ACQUITTAL ON CAUSATION BARS ANY SUBSEQUENT MURDER CONVICTION**
- II. THE PROSECUTION'S CASE RESTED ON ZERO DIRECT EVIDENCE**
- III. THE STATE RELIED ON PREJUDICIAL AND PERJURED TESTIMONY**
- IV. IRRECONCILABLE CONTRADICTIONS IN STATE'S CASE**
- V. NATIONAL IMPERATIVE FOR REVIEW**

GROUNDΣ FOR REVIEW

- I. THE JURY'S EXPLICIT ACQUITTAL ON CAUSATION BARS ANY SUBSEQUENT MURDER CONVICTION**
 1. The malice murder acquittal constituted a finding of "no killing"
 - The trial court's jury instructions for count one required unanimous agreement that Petitioner "did unlawfully and with malice aforethought cause the death of the victim by shooting him with a handgun."
 - The acquittal constituted a binding factual determination that Petitioner did not cause the death - a finding protected by *Ashe v. Swenson*, 397 U.S. 436 (1970). (Collateral estoppel applies to acquittals).
 2. Felony murder conviction violates *Ashe* and *Yeager*
 - Under *Yeager v. United States*, 557 U.S. 110 (2009), when an acquittal "necessarily decided an issue, (here, CAUSATION), the government cannot re-litigate that issue in any form.
 - Georgia's felony murder statute, O.C.G.A. § 16-5-1(c), still requires proof of a killing - the very fact the jury rejected. This is precisely the "successive prosecution" barred by *Brown v. Ohio*, 432 U.S. 161 (1977).

II. THE PROSECUTION'S CASE RESTED ON ZERO DIRECT EVIDENCE

1. No forensic or eyewitness evidence connected Petitioner to the crime. The State presented:
 - No eyewitnesses who saw the Petitioner shoot the victim
 - No eyewitnesses who saw the Petitioner in possession of a firearm on the night of the alleged kidnapping
 - No fingerprints/DNA linking Petitioner to scene
 - This violates *Jackson v. Virginia*, 443 U.S. 307 (1979). (Convictions require evidence proving guilt beyond a reasonable doubt).
2. The State's entire case was built on inferences
 - Without direct evidence, the prosecution asked the jurors to "infer guilt from:
 - Contradictory witness testimony, (See Section VI)
 - Fabricated similar transaction evidence, (See Section III)
 - A detective's perjured testimony, (See Section III)

III. THE STATE RELIED ON PREJUDICIAL AND PERJURED TESTIMONY

1. The Georgia Supreme Court acknowledged error in admitting similar transaction testimony
 - As noted by the Georgia Supreme Court, the trial court likely erred in admitting testimony about an unrelated alleged crime where:
 - Petitioner was never arrested or charged
 - The witness initially identified two other perpetrators
 - No physical evidence connected Petitioner to the alleged crime
 - Despite calling this error "harmless" the in-court identification was highly prejudicial, violating *Petty v. New Hampshire*, 565 U.S. 228 (2012). (Unreliable identifications require exclusion). The sudden courtroom

identification - after failing to pick Petitioner from a photo array irreparably tainted the jury's perception.

2. Detective fabricated a confession

- The detective testified he overheard Petitioner confess during booking
- This was demonstrably false
- Several other officers present testified no confession occurred
- No recording or written statement exist
- The same detective lied about confessions in *Harris v. State*, 268 Ga. 412, S.E. 2D 96 (1997).

IV. IRRECONCILABLE CONTRADICTIONS IN STATE'S CASE

Two key prosecution witnesses gave physically impossible accounts of the alleged kidnapping:

- Witness 1 testified "we were in the bedroom talking when Marcus came in several times that night"
- Witness 2 testified "I didn't see Marcus at all that night - first time was next morning

This is a direct contradiction about the Petitioner's presence:

- Renders both accounts inherently unreliable, (*Manson v. Brathwaite*, 432 U.S. 98 (1977))
- Shows the State's case was built on knowingly inconsistent testimony.

V. NATIONAL IMPERATIVE FOR REVIEW

This Court must grant certiorari because:

1. Circuit split on *Ashe's* application
- The 11th Circuit, (including Georgia), routinely allows felony murder convictions after causation acquittals
- The 2nd and 9th Circuits bar such convictions, (*Bravo-Fernandez v. U.S.*,

480 U.S. *** (2017)

2. Erosion of Double Jeopardy Protections

- If State's can nullify acquittals by charging alternative theories, "the constitutional prohibition against Double Jeopardy would become a nullity", (**Yeager v. U.S.*, 557 at 125).
- 3. Prosecutorial Misconduct Epidemic
- This case exhibits all three hallmarks condemned in *Berger v. United States*, 295 U.S. 78 (1935):
 - (1) Knowingly using perjured testimony, (2) Admitting fabricated propensity evidence, (3) Subverting jury verdicts.

CONCLUSION

For these reasons and those stated in the original petition, this Court should review Petitioner's actual trial transcripts. Petitioner respectfully requests reconsideration to prevent Georgia's Constitution violations - including prejudicial admission of unreliable identification testimony that the state Supreme Court acknowledged as erroneous, from becoming entrenched precedent.

The Petitioner certifies that this Petition for Rehearing is presented in good faith and not for delay.

Respectfully submitted this 1st day of May, 2025.

Marcus D. Crowder

Marcus Crowder, Pro Se
GDC No. 623937
210 Longbridge Road
Helena, GA 31037

CERTIFICATE OF SERVICE

I certify that I have served the foregoing Petition for Rehearing on the parties listed below by placing the same in the United States Mail via the Telfair State Prison mail system with adequate postage affixed thereon and addressed as follows:

Georgia Attorney General 40 Capitol Square, S.W. Atlanta, GA 30334	Alisha Johnson, D.A. 922 Court Street, Ste. 201 Conyers, Ga. 30012
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Submitted this 1st day of May, 2025.

Marcus D. Crowder

Marcus Crowder, Pro Se
GDC No. 623937
210 Longbridge Road
Helena, GA 31037