

No. _____

**In the
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 2025

Patrick Jay Sullivan, *Petitioner*,

v.

State of Minnesota, *Respondent*.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a court enters an acquittal on the merits and vacates a conviction during postconviction proceedings, may the same court later take back the acquittal on the merits and “reinstate” the conviction without running afoul of the Double Jeopardy Clause?

LIST OF ALL PARTIES

The parties to the proceeding in the court whose judgment is sought to be reviewed were Patrick Jay Sullivan and the State of Minnesota.

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**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner Patrick Jay Sullivan respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the Minnesota Supreme Court appears at Appendix A to this petition. The court's opinion is published at 35 N.W.3d 387 (Minn. 2026).

JURISDICTION

The Minnesota Supreme Court issued its decision on May 27, 2026. That decision appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

A. The Offense

On January 19, 2023, appellant Patrick Sullivan and his mother had a disagreement about Sullivan's treatment of his dog. (T. 134.) His mother testified that she pushed Sullivan away from his dog and that he pinned her arms down on a chair where she was seated, hurting her and causing injury. (T. 134-36, 226.)

The State charged Sullivan in Aitkin County with felony domestic assault, Minn. Stat. § 609.2242, subd. 4, and misdemeanor mistreatment of an animal, Minn. Stat. § 343.21, subd. 7. (Doc. 1.) The case proceeded to a jury trial.

B. The State's Failure to Prove an Element of the Crime

The State had the burden at Sullivan's trial to prove every element beyond a reasonable doubt, including the element that Sullivan had two qualified domestic-violence related prior convictions within the previous ten years. Minn. Stat. § 609.2242, subd. 4; *State v. Berkelman*, 355 N.W.2d 394, 396 (Minn. 1984). The parties discussed on the record entering a stipulation to the prior-conviction element. But no stipulation, with the required rights-waiver colloquy was ever attempted or completed. The jury was not instructed on the prior-conviction element.

The jury found Sullivan guilty of the domestic assault and acquitted him of the animal-mistreatment offense. (Doc. 44.) The district court sentenced Sullivan to 21 months in prison. (Doc. 54.)

Sullivan directly appealed and the Minnesota court of appeals granted him a stay of the appeal to pursue postconviction relief. (Doc. 78.) Sullivan's petition raised one claim:

that the State failed to prove an element of felony domestic assault beyond a reasonable doubt because it did not prove that Sullivan had two specific prior convictions. (Doc. 79.) The State filed no written response.

The parties appeared for a hearing on February 7, 2024. (Doc. 114.) The prosecutor asserted that he tried, but failed, to enter a stipulation to the prior-conviction element. (Doc. 114 at 10.) The State requested an opportunity to file a written response to the petition. The court granted leave to do so, over Sullivan’s objection, but the State never filed any response. (Doc. 114 at 14.)

On February 29, 2024, the postconviction court granted Sullivan relief. (Doc. 88.) The court made a finding of fact that, although the parties “discussed” a stipulation to the prior-conviction element, “[n]o oral or written stipulation was ever completed.” (Doc. 88 at 2.) The court also found that the prior-conviction element was nonetheless removed from the jury instructions, so the jury did not find the element proven beyond a reasonable doubt. (Doc. 88 at 2.) The postconviction court concluded, “All elements of a crime must be proven beyond a reasonable doubt for a conviction to stand. In the case-at-bar, one element is missing. Therefore, the Defendant’s petition to vacate is GRANTED.” (Doc. 88 at 3.) The court vacated Sullivan’s conviction. (Doc. 88 at 3.)

Thereafter the district court scheduled the case for what it called a plea hearing and the State filed a notice of intent to seek an aggravated sentence. (Docs. 89, 95.) Sullivan filed a letter arguing that, given the reversal of his conviction on sufficiency grounds, double jeopardy prohibited the government from retrying him and the court had to release him from custody. (Doc. 96.)

One hour before the hearing, and two weeks after the court vacated Sullivan’s conviction and sentence, the State filed a motion to reconsider. (Doc. 98.) Sullivan notified the court and prosecutor that double jeopardy precluded retrial. (Doc. 113 at 3-4; Doc. 103 at 3.) The court took the State’s motion under advisement and issued an order releasing Sullivan from custody. (Doc. 107.)

Three months later the postconviction court granted the State’s motion to reconsider and “reinstated” Sullivan’s conviction and sentence. (Doc. 110.) The second order did not acknowledge the first order, make any contrary fact findings, or reconsider the sufficiency analysis. (Doc. 110.)

Sullivan reinstated his appeal and argued that double jeopardy prohibited the postconviction court from reinstating the conviction and sentence following an acquittal on the merits. The court of appeals affirmed Sullivan’s reinstated conviction and held that double jeopardy did not prohibit the reinstatement of Sullivan’s conviction and sentence. *State v. Sullivan*, No. A23-1134, 2025 WL 302586, at *4 (Minn. App. Jan. 27, 2025). The Minnesota Supreme Court granted Sullivan’s petition for review.

C. The Minnesota Supreme Court Opinion

The Minnesota Supreme Court agreed that the State failed to prove an element of the offense. *State v. Sullivan*, 35 N.W.3d 387, 395-96 (Minn. 2026). The court analyzed whether double jeopardy precluded the postconviction court entering an acquittal on the merits and later taking it back and concluded that this Court’s precedent authorized such a practice. *Id.* at 393. The court further concluded that, despite the government’s failure to prove its case, it would not reverse the conviction for lack of sufficient evidence, holding

that Sullivan “invited” the State’s failure to prove the case beyond a reasonable doubt. *Id.* at 396-97.

REASONS FOR GRANTING THE PETITION

WHEN A COURT IN POSTCONVICTION PROCEEDINGS ENTERS AN ACQUITTAL ON THE MERITS, MAY THAT SAME COURT LATER TAKE BACK THE ACQUITTAL ON THE MERITS WITHOUT VIOLATING DOUBLE JEOPARDY?

This Court has set a uniform and steadfast rule: when a court enters an acquittal on the merits, that same court cannot later take back or undo the acquittal, no matter what. In this case, after he was convicted and imprisoned, petitioner Sullivan raised in postconviction proceedings the sufficiency of the evidence supporting his conviction. The postconviction court found the evidence insufficient and entered an acquittal on the merits. Sullivan was released from custody. Then, a few months later, the acquitting court took it back. It entered a new order “reinstating” Sullivan’s conviction and he was thereafter required to serve the balance of his sentence. This Court has never permitted any court to take back its own acquittal on the merits and this Court should grant review to forbid the same in a new procedural posture.

A. Double Jeopardy and Acquittals on the Merits

The federal Double Jeopardy Clause states, “nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. “The Fifth Amendment’s prohibition against placing a defendant ‘twice in jeopardy’ represents a constitutional policy of finality for the defendant’s benefit.” *United States v. Jorn*, 400 U.S. 470, 479 (1971). In Double Jeopardy jurisprudence, one action is sacrosanct: the

acquittal on the merits. An acquittal on the merits occurs when “the ruling of the judge, whatever its label, actually represents a resolution [in the defendant’s favor], correct or not, of some or all of the factual elements of the offense charged.” *United States v. Scott*, 437 U.S. 82, 97 (1978) (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977)). And once a court enters acquittal on the merits, that court cannot further review the case: “The verdict of acquittal was final, and could not be reviewed, on error or otherwise, without putting him twice in jeopardy, and thereby violating the constitution.” *Ball v. United States*, 163 U.S. 662, 671 (1896). This Court has called this “the most fundamental rule in the history of double jeopardy jurisprudence.” *Martin Linen*, 430 U.S. at 571.

The rule disallowing a court to review its own acquittal on the merits is unflinching. It applies even when the acquitting wanted to undo the acquittal a short time later. *Smith v. Massachusetts*, 543 U.S. 462, 469-74 (2005) (holding double jeopardy barred a district court judge’s reconsideration of an earlier-granted acquittal on the merits). It applies even when the acquittal was a mistake. *Evans v. Michigan*, 568 U.S. 313, 318-20 (2013) (“A mistaken acquittal is an acquittal nonetheless.”).

This Court has never in its history held that an acquittal on the merits may be undone by the acquitting court. But now the Minnesota Supreme Court has said just that.

B. The Minnesota Supreme Court Created its Own Anomalous Exception to this Court’s Rule

In this case, following a guilty verdict and imposition of sentence, a trial court judge sitting as the postconviction court entered a judgment of acquittal. It found that the

government failed to prove one element of the offense beyond a reasonable doubt. It vacated the conviction and Sullivan was therefore released from custody. Months later, on the government's motion, the same court "reconsidered" the acquittal on the merits, reversed itself by taking back the acquittal on the merits, and "reinstated" the conviction. Sullivan was thereafter re-incarcerated for the balance of his sentence.

This matter is worthy of this Court's attention because the Minnesota Supreme Court opinion goes against more than a century of this Court's double jeopardy jurisprudence. The Minnesota Supreme Court distorted this Court's Double Jeopardy jurisprudence to permit an acquitting court to undo its own acquittal on the merits.

In *Wilson*, this Court stated,

By contrast, where there is no threat of either multiple punishment or successive prosecutions, the Double Jeopardy Clause is not offended. In various situations where appellate review would not subject the defendant to a second trial, this Court has held that an order favoring the defendant could constitutionally be appealed by the Government. Since the 1907 Criminal Appeals Act, for example, the Government has been permitted without serious constitutional challenge to appeal from orders arresting judgment after a verdict has been entered against the defendant. Since reversal on appeal would merely reinstate the jury's verdict, review of such an order does not offend the policy against multiple prosecution.

United States v. Wilson, 420 U.S. 332, 344-45 (1975). The Minnesota Supreme Court took this language farther, to mean that an acquitting court can review its own acquittal on the merits, because it would only lead to reinstatement of the guilty verdict. *Sullivan*, 35 N.W.3d at 393. But this misreads *Wilson*. *Wilson* did not involve an acquittal on the merits. 420 U.S. 332, 344-45. Rather *Wilson* involved a post-verdict acquittal based on preindictment delay, which this Court labeled a "postverdict ruling of law." *Id.* It was in

this context that this Court held, “We therefore conclude that when a judge rules in favor of the defendant after a verdict of guilty has been entered by the trier of fact, the Government may appeal from that ruling without running afoul of the Double Jeopardy Clause.” *Id.* at 353-54. *Wilson* does not hold that post-verdict *acquittals on the merits* could be reviewed in such a manner nor does it allow an acquitting court to take back its own acquittal on the merits.

Two other cases have prompted more confusion. In *Smith* this Court cited *Wilson* and stated,

Our cases have made a single exception to the principle that acquittal by judge precludes reexamination of guilt no less than acquittal by jury: When a jury returns a verdict of guilty and a trial judge (or an appellate court) sets aside that verdict and enters a judgment of acquittal, the Double Jeopardy Clause does not preclude a prosecution appeal to reinstate the jury verdict of guilty.

Smith, 543 U.S. at 467 (citing *Wilson*, 420 U.S. 332, 352-53). *Smith* did involve an acquittal on the merits, but not in a post-verdict posture: “When the judge in this case first granted petitioner’s motion, there had been no jury verdict.” *Id.* Thus *Smith* had no occasion to assess or apply a rule about post-verdict acquittals on the merits.

This Court made a similar statement in *Evans*, in a footnote, and likewise the statement was inapplicable in that case as the acquittal on the merits came before the verdict. *Evans*, 563 U.S. at 330 n.12. Moreover, *Evans* explains that part of the confusion about *Wilson*’s applicability stems from its inapt use of the word “acquittal.” *Evans* explains:

Most relevant here, our cases have defined an acquittal to encompass any ruling that the prosecution’s proof is insufficient to establish criminal

liability for an offense. Thus an “acquittal” includes “a ruling by the court that the evidence is insufficient to convict,” a “factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability,” and any other “rulin[g] which relate[s] to the ultimate question of guilt or innocence.” These sorts of substantive rulings stand apart from procedural rulings that may also terminate a case midtrial, which we generally refer to as dismissals or mistrials. Procedural dismissals include rulings on questions that “are unrelated to factual guilt or innocence,” but “which serve other purposes,” including “a legal judgment that a defendant, although criminally culpable, may not be punished” because of some problem like an error with the indictment.

Id. at 318-19 (internal quotation omitted). Because *Wilson* involved a ruling about preindictment delay, it should have been termed a dismissal. It was not an “acquittal” as the *Evans* court explained the term and certainly was not an acquittal on the merits.

The Minnesota Supreme Court relied exclusively on *Wilson* and *Smith* to assert that Sullivan’s postconviction court—acting as it did following a guilty verdict—could, consistent with the Double Jeopardy Cause, enter an acquittal on the merits and then take it back. 35 N.W.2d at 393-94. This was wrong, unprecedented, and rooted in a misapplication of this Court’s precedent.

This is wrong and novel in several ways. First, it relied on *Wilson*, a case without an acquittal on the merits, to set a rule for acquittals on the merits. This Court has never applied the *Wilson* language in an acquittal-on-the-merits case. Second, it allows an acquitting court to take back its own acquittal on the merits, an action which this Court has never condoned in any context. Third, the Minnesota Supreme Court confused and conflated the availability (and legality) of a government appeal with the constitutionality of the acquitting court undoing its own acquittal on the merits. It is generally true that in a post-verdict posture the government may appeal rulings in the defendant’s favor. In

Minnesota the government is statutorily granted that opportunity. Minn. Stat. § 590.06. But the government did not take that opportunity and did not appeal. Instead, it asked the acquitting court to take back its acquittal on the merits, and it is that government action that Sullivan believes violates this Court's jurisprudence.

D. This Sharp Departure From This Court's Jurisprudence Merits Review

This case stands as a troubling anomaly in double jeopardy jurisprudence. This Court has never said that an acquitting court can take back its own acquittal on the merits and instead its caselaw is a consistent bulwark against just that. This case calls for the application of a robust body of law in a new procedural posture: post-verdict, postconviction litigation. Neither the government nor either Minnesota appellate court provided any rationale for why a different rule should apply to acquittals on the merits made postconviction than the universal rule for acquittals on the merits made at other times. In other words, the Minnesota Supreme Court made a gaping exception to an otherwise straightforward rule and did so without authority from this Court.

Granting review of this case would allow this Court to consider application of a well-established rule in a new context. It would allow this Court to serve as the final authority on the federal Double Jeopardy Clause and to either extend it or limit it in a novel way. And it would ensure that the people of Minnesota have the same federal double-jeopardy rights as citizens of other states.

CONCLUSION

Sullivan respectfully requests this Court grant the writ to examine this novel application of the Double Jeopardy Clause.

Dated: August 25, 2026

Respectfully submitted,

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