

Supreme Court Agrees to Hear Wiley Pro Bono Case Involving 'Double Jeopardy' Clause

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Washington, DC – Working with the Supreme Court Program at the University of North Carolina School of Law, Wiley Rein LLP persuaded the U.S. Supreme Court to hear *McElrath v. Georgia*, an important case involving the Double Jeopardy Clause of the Fifth Amendment.

In granting the petition for writ of certiorari on June 30, the Supreme Court agreed to review whether a 2022 ruling of the Supreme Court of Georgia violated the Double Jeopardy Clause in holding that the petitioner, Damian McElrath, could be retried for a crime even though a jury already acquitted him of the same charge.

A jury convicted McElrath of felony murder but acquitted him of malice murder by reason of insanity based on the same underlying facts, thereby finding McElrath to be both sane and insane at the same time. At issue is whether the Supreme Court of Georgia erred when it ruled that certain kinds of inconsistent verdicts – those so inconsistent that they are “repugnant” to one another – are not subject to the protections of the Double Jeopardy Clause, which guarantees that no person can be “twice put in jeopardy of life or limb.” Based on this constitutional protection, the Supreme Court has long held that verdicts of acquittal are final and unreviewable, even if the acquittal is inconsistent with a simultaneously rendered conviction. Subjecting a defendant to a second trial for a crime of which he was acquitted would put him in jeopardy again, violating the Constitution.

Wiley argued in the petition that no matter what label a court applies, a so-called repugnant verdict is simply a particular type of inconsistent verdict, so McElrath cannot face trial again for the malice murder charge of which he was already acquitted.

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The petition argued that, if permitted to stand, the decision of the Supreme Court of Georgia would expand the circumstances under which people in Georgia may face a second trial on criminal charges far beyond what is permissible under current precedent of the Supreme Court.

Wiley attorneys Richard A. Simpson and Elizabeth E. Fisher are representing the petitioner on a pro bono basis, along with co-counsel Professor F. Andrew Hessick of the University of North Carolina School of Law and H. Maddox Kilgore and Carlos J. Rodriguez of Kilgore & Rodriguez, LLC, in Marietta, Georgia. Law student Adam C. Gillette and Wiley project assistant Sophia Winston-Mendoza also participated in preparing the Supreme Court petition.