

# Wiley Secures Supreme Court Victory in Double Jeopardy Case

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*Washington, DC* – In a unanimous decision, the U.S. Supreme Court rejected an attempt by the State of Georgia to prosecute Damian McElrath, a Wiley client, a second time for the same offense. The Court held that federal law, not state law, determines what is an acquittal and that the Double Jeopardy Clause of the Fifth Amendment prohibited Georgia's effort to characterize a jury's verdict of acquittal as something other than an acquittal. The Court's opinion, written by Justice Ketanji Brown Jackson, held that "an acquittal is an acquittal" and that "whatever the basis, the double jeopardy clause prohibits second-guessing the reason for a jury's acquittal."

"We are very pleased to have a unanimous decision in favor of our client," said Wiley partner Richard A. Simpson, who argued the case. "We were optimistic, based on the oral argument, and it is gratifying to see that the Court agreed with our arguments. The decision will be an important precedent regarding the Double Jeopardy Clause, assuring that a state may not subject a defendant who has been acquitted of a charge to a second trial on the same charge even if the acquittal is repugnant to a conviction on a different charge."

A Georgia jury convicted McElrath of felony murder but found him not guilty by reason of insanity of malice murder on charges arising from the same underlying facts, thereby finding McElrath to be both sane and insane at the same time. The Supreme Court of Georgia held that the two verdicts were so inconsistent as to be "repugnant," and that both the conviction and the acquittal should be vacated. Wiley and its co-counsel acknowledged that the verdicts were inconsistent and irreconcilable, but argued that under the Double Jeopardy Clause an acquittal is absolutely final and courts may not look behind

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## Practice Areas

Issues and Appeals

the jury's decision. The Supreme Court agreed, holding that Georgia may not prosecute McElrath again on the malice murder charge.

Wiley attorneys Richard A. Simpson and Elizabeth E. Fisher represent McElrath 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. Students in the Supreme Court Program at the University of North Carolina School of Law assisted with briefing and oral argument preparation.