

**STATE OF MICHIGAN
3rd CIRCUIT CRIMINAL COURT
COUNTY OF WAYNE**

People of the State of Michigan

Plaintiff,

Case No. 24-000535-01-FC

vs.

Hon. Margaret M. Van Houten

Michael Manuel Jackson Bolanos,

Defendant.

_____ /

MOTION TO DISMISS

Defendant, MICHAEL MANUEL JACKSON BOLANOS, by and through his attorneys, BRIANS. BROWN and PURNA KRISHNAMOORTHY, moves this Court to Dismiss the Charges, as they violate Double Jeopardy protections, and states in support that:

1. On July 18th 2024 , Mr. Jackson-Bolanos was acquitted of 1st degree murder.
2. This acquittal followed a jury trial at which the jury acquitted Mr. Jackson-Bolanos of first degree premediated murder and the lesser included offense of second-degree murder, but asserted that it could reach no verdict on the charge of first-degree felony murder and the lesser included second-degree murder and first degree home invasion. He was found guilty of lying to a peace officer.
3. Given the jury's verdict, any felony murder charges and home invasion charges must be dismissed on double jeopardy grounds. US Const, Ams V, XIV; Const 1963, art

1, § 15, *Arizona v Washington*, 434 US 437 (1978); *People v Lett*, 466 Mich 206 (2002).

WHEREFORE, MICHAEL JACKSON-BOLANOS moves that this Honorable Court
dismiss any remaining charges.

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STATEMENT OF FACTS

Michael Jackson-Bolanos stood trial before the Honorable Margaret Van Houten. He was charged with first-degree premeditated murder and first-degree felony murder, Home Invasion 1st Degree and Lying to a peace Officer. On July 18th, Mr. Jackson-Bolanos was acquitted of 1st Degree Murder guilty of lying to peace officer and the jury was hung on Felony Murder and Home Invasion 1st Degree.

At the close of Mr. Jackson Bolanos trial, Judge Van Houten instructed the jury on premeditated and felony murder, as well as the lesser-included offense of second-degree murder. With respect to second-degree murder, Judge Van Houten delivered, in relevant part, the following instruction:

Regarding count two, felony murder.

You must consider the crime of felony murder first.

If you believe that the defendant is not guilty of felony murder, or if you cannot agree about that crime, you should consider the less serious crime of second degree murder.

You can go back to felony murder, after discussing second-degree murder, if you want to.

Regarding count two, premeditated murder, you must consider the crime of premeditated murder first.

If you believe that the defendant is not guilty of premeditated murder, or if you cannot agree about that crime, you should consider the less serious crime of second-degree murder.

You can go back to premeditated murder, after discussing second degree murder, if you want to.

Judge Van Houten then instructed the jury on the elements of second-degree murder.

After deliberating for multiple days, the jury acquitted Mr. Jackson-Bolanos of first-degree premeditated murder and also the lesser-included second-degree murder charge, as evidenced by the Verdict Form. Appendix A – Verdict Form. They said that they could not reach a verdict on first-degree felony murder or home invasion. However he was found guilty of lying to a peace officer.

Consistent with the court’s instructions, the verdict form provided the following options with respect to the charge of premeditated murder:

Mark ONLY ONE of the following boxes:

NOT GUILTY

OR

GUILTY of COUNT 1, First-degree premeditated murder

OR

GUILTY of the lesser included offense of Second-degree Murder

The jurors checked option #1 – not guilty. Appendix B – Verdict Form. The verdict form provided the same options with respect to felony murder, but the jury did not check any options for this charge. AppendixB.

I. MR. JACKSON-BOLANOS CANNOT BE TRIED AGAIN FOR FELONY MURDER IT VIOLATES THE DOUBLE JEOPARDY CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS, BECAUSE HE WAS ACQUITTED OF FIRST-DEGREE PREMEDITATED MURDER. FURTHER THE FELONY MURDER CHARGE MUST BE DISMISSED AS IT NECESSARILY INCLUDES THE ELEMENTS OF SECOND-DEGREE MURDER WITHIN IT.

Here by its duly rendered verdict, evidenced on the executed verdict form, the jury acquitted Mr. Jackson-Bolanos of first-degree premeditated murder and the lesser-included charge of second-degree murder. Further, because the elements of second-degree murder are necessarily included in first-degree felony murder this Court must dismiss that charge.

Our state and federal constitutions provide that the government cannot put a defendant in jeopardy twice for the same offense. US Const, Am V; Const 1963, art 1, § 15, *Arizona v Washington*, 434 US 437, 503 (1978); *People v Lett*, 466 Mich, 206, 213 (2002). “Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial.” *Washington*, 434 US at 505.

The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Lett, 466 Mich at 214, citing *Green v United States*, 355 US 184-187-88 (1957).

The Double Jeopardy Clause protects the “public interest in the finality of criminal judgments.” *United States v DiFrancesco*, 449 US 117, 129 (1980); see *Fong Foo v United States*, 369 US 141, 143 (1962). A verdict of acquittal is final, ending a defendant’s jeopardy.

DiFrancesco, 449 US at 129. The law “attaches particular significance to an acquittal.” *United States v Scott*, 437 US 82, 91, 98 (1978).

The Double Jeopardy Clause includes the concept of issue preclusion, also known as collateral estoppel. *People v Garcia*, 448 Mich 442, 497; 531 NW2d 683 (1995).

The court instructed the jury to consider second-degree murder as a lesser offense of count two - premeditated murder, and *separately* as a lesser offense of count one - felony murder. V 99-101. Importantly, in regard to the premeditated murder charge, the court instructed the jury to first consider premeditated murder and if it could not agree on that greater offense to then consider the lesser offense of second-degree murder and that it could go back and forth between the two. The verdict form gave the jury three options with respect to count two:

Mark ONLY ONE of the following boxes:

NOT GUILTY

OR

GUILTY of COUNT 1, First-degree premeditated murder

OR

GUILTY of the lesser included offense of Second-degree Murder

The jurors checked option #1 – not guilty. Appendix A – Verdict Form. By checking “not guilty” on the verdict form with respect to premeditated murder, the jury acquitted Mr. Jackson-Bolanos of second-degree murder as a lesser offense of premeditated murder as clearly indicated on the form.

Further, juries enjoy an ‘unreviewable power . . . to return a verdict of not guilty for impermissible reasons,’ for “the [g]overnment is precluded from appealing or otherwise upsetting

such an acquittal by the Constitution’s Double Jeopardy Clause.” *United States v Powell*, 469 US 57, 63 (1984).

This court must dismiss the charge of felony murder, which is second-degree murder committed during the course of one of the enumerated predicate felonies.¹ The collateral estoppel doctrine, as part of the Double Jeopardy Clause, also helps give finality to litigants. *People v Wilson*, 496 Mich 91, 98 (2014), abrogated on other grounds by *Bravo-Fernandez*. Collateral estoppel “means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.” *Ashe*, 397 US at 443. It requires the court to “examine the record of an entire proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.” *Id.* at 444 (internal quotations omitted. Because the elements of second-degree murder are necessarily included in first-degree felony murder, the prosecutor cannot pursue the felony murder count given the previous acquittal of second-degree murder at trial.

In *People v Treshaun Terrance* COA 343154 (2019) an unpublished case, a very similar situation occurred. Mr. Terrance was acquitted of 1st degree murder as well as second murder but the jury could not reach a verdict on felony murder. The prosecutor subsequently charged Mr. Terrance again with felony murder, however the prosecutor then conceded that Mr. Terrance could not be tried again for felony murder because it violated the double jeopardy clause. The prosecutor then tried to charge Mr. Terrance with torture. The Court ruled that the prosecutor could not charge

¹ Second-degree murder is a necessarily-included lesser offense of first-degree murder, including felony murder. *People v Aaron*, 409 Mich 672, 725 (1980). First-degree felony murder is second-degree murder during the commission or attempted commission of an enumerated felony. *People v Carter*, 395 Mich 434, 437 (1975).

him with torture in a subsequent trial. The Court stated “However, the issue preclusion-aspect of double jeopardy is governed by different rules which are intended to protect the finality of judgments. When applying issue preclusion, we may not consider the meaning or effect of the jury’s failure to reach a verdict on a charge. *Yeager*, 557 US at 122. The question turns not on the elements of the charged crimes, but rather on the actual evidence and factual arguments made at trial. *Id.* at 120. In other words, following his acquittals, defendant may only be charged with torture in a second trial if there was evidence or argument at the first trial from which the jury could have concluded, even by inference that defendant was guilty of torture despite the fact that he did not commit the murder”

The Court concluded that the Jury found that Mr. Terrance was not responsible for the assault that caused the death of the victim. In that case neither the Defense or the People argued that the defendant committed only the murder or only the beating. It was a packaged deal as to both acts.

In our case neither the Defense or the Prosecutor argued that Mr. Jackson-Bolanos only committed either the home invasion or the murder. The prosecutor argued that Mr. Jackson-Bolanos committed the home invasion and the murder. According to the prosecutor’s arguments these two crimes i.e issues were a packaged deal one not being able to exist without the other.

The Defense suggested that Mr. Jackson-Bolanos did neither. The jury found that Mr. Jackson-Bolanos did not commit the murder. The home invasion is barred under issue preclusion since the prosecutor unsuccessfully argued that the home invasion happened in combination with the murder.

SUMMARY AND RELIEF

WHEREFORE, for the forgoing reasons, Mr. Jackson-Bolanos moves that this Honorable Court to preclude the prosecutor from recharging Felony Murder and in the event the prosecutor recharges then Mr. Jackson-Bolanos moves this court to dismiss the charges.

Respectfully submitted,

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