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Effect of Acquital For Assault on Trial for Murder when Victim Sussequently Dies - Crawford v. State

EFFECT OF ACQUITTAL FOR ASSAULT ON TRIAL FOR MURDER WHEN VICTIM SUBSEQUENTLY DIES

Crawford v. State[1]

The defendant-appellant was indicted for murder by the grand jury of Baltimore City. To this indictment he filed a special plea to the effect that he had been arraigned before a magistrate charged with "Assaulting and shooting Loretta Anderson (c), age nine months, with a pistol in Baltimore City, State of Maryland, on August 7, 1937," and that after a full and complete hearing before the magistrate he was found not guilty, and that the assaulting and shooting of which he was thus found not guilty was the same assaulting and shooting alleged to have later caused the death for which he was charged in the indictment for murder. A demurrer to this plea was sustained. The defendant was tried and convicted of second degree murder by the court sitting as a jury.

Defendant contended, upon appeal, that the court erred in sustaining the demurrer, relying solely upon the doctrine of *res judicata;* that since he was found not guilty of the crime of which he was charged before the magistrate, his acquittal created an estoppel by judgment which barred the State from prosecuting him upon a more serious charge growing out of the less. Against this the State made two contentions, (1) that the magistrate had no jurisdiction

[1] 197 A. 866 (Md. 1938).

of the offense for which he was tried, and hence the acquittal was a mere nullity, and, (2) that his acquittal of assaulting with a pistol, being for a lesser offense than murder, did not estop the State from prosecuting him upon the murder charge. The Court of Appeals upheld the judgment of the lower court upon the first contention of the State, and did not discuss the second contention.

Accepting, for the sake of the argument, the correctness of the Court's conclusion on the first contention[2] made by the State on appeal in the principal case, this casenote proposes to discuss the implications of the second, and unanswered contention.

That no person shall, for the same offense, be twice put in jeopardy, is both a provision of the Constitution of the United States and that of Maryland, and an established rule of the Common Law, and a plea of former jeopardy is good under either. The rule forbids a second trial for the *same offense* whether the accused at the former trial was acquitted or convicted.[3] Having the rule, the problem then arises of determining what is a second trial for the same offense, where the act done results in different criminal liabilities. A test almost universally applied to determine the identity of the offense is to ascertain the identity, in character and effect, of the evidence in both cases. If the evidence which is necessary to support the second indictment was admissible under the former, was related to the same crime, and was sufficient if believed by the jury to have warranted a conviction of that crime, the offenses are identical, and a plea of former conviction or acquittal is a bar.[4]

Where the act done results in criminal liability of different degrees and the first prosecution is for the greater offense, the rule is that if the lesser offense, for which the accused is put in jeopardy, is an element of the greater offense of which he has been acquitted or convicted, arising out of the same criminal act, the plea of former jeopardy is a bar to such subsequent prosecution. But where the lesser offense is a substantive offense, not involved in, or not a necessary ingredient of the greater offense, and the evidence to support it was not essential to a conviction in the

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[2] The Court's conclusion was that a charge of "assaulting and shooting . . . with a pistol" was, in effect, one of assault with intent to kill. Under Baltimore City Charter, Sec. 724, a Magistrate's Court has jurisdiction of simple assaults only.

[3] Gilpin v. State, 142 Md. 464, 466, 121 A. 354 (1923). For discussion of Constitutional provision, see note, Extent to Which Rights Secured by the First Eight Amendments to the Federal Constitution Are Protected Against State Action by the Fourteenth Amendment (1938) 2 Md. L. Rev. 174.

[4] 16 C. J. 265.

former case, the plea is not a bar to a prosecution under an indictment charging him with the commission of such lesser offense.[5] Thus, where, upon an indictment for murder or manslaughter a defendant can be convicted of an assault, an acquittal upon such indictment will bar a prosecution for the assault; but the rule is otherwise where a conviction for the assault cannot be had upon an indictment for the higher crime.[6]

This is assuming that both the first and second prosecutions are in courts which have jurisdiction over both the greater and lesser crime.[7] A difference of opinion prevails as to whether conviction of a minor offense in an inferior court bars a prosecution for a higher crime where the inferior court does not have jurisdiction of the higher crime. Some courts take the view that the State cannot, after prosecuting the accused before a Justice of the Peace for an offense within his jurisdiction, avoid the effect of the judgment upon the theory that such an offense was an ingredient of a higher crime of which the Justice had no jurisdiction, while others hold that a conviction of a minor offense in an inferior court, such as a Justice's court, does not bar a prosecution for a higher crime of which the inferior court has no jurisdiction.[8] Admittedly, where the Justice had no jurisdiction of the crime for which the accused was tried before him, any verdict rendered is a nullity which does not, in legal contemplation, jeopardize life or limb.[9] This would dispose of any contention that the doctrine would apply in the principal case.

When, after the first prosecution, a new fact supervenes, for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct crime, an acquittal or conviction of the first offense is not a bar to an indictment for the other distinct crime. This principle is the foundation for the universal rule that at common law a conviction for assault while the person assaulted is still living is no bar to a prosecution for murder or manslaughter instituted after death has resulted to the person assaulted on account of the injuries received, and the trial for murder does not

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[5] Gilpin v. State, *supra* n. 3.

[6] 16 C. J. 275. See also 15 Am. Jur. 63.

[7] Where the Justice of the Peace and the Criminal Court have concurrent jurisdiction of the same crime, a trial before the Justice will bar another trial in the Criminal Court, Friend v. State, 2 A. (2nd) 430 (Md. 1938).

[8] 15 Am. Jur. 62.

[9] State v. Sutton, 4 Gill 494 (1846) and other Maryland decisions support the view that any verdict which is a nullity for any reason, is not jeopardy which will be a bar to subsequent prosecution.

place the defendant twice in jeopardy.[10] There is also text authority for the proposition that the same result would be reached after an acquittal for assault.[11] As is pointed out by one writer, all of the cases cited in support of the proposition were cases of conviction of the assault. In commenting on this rule, he observes this, but concludes, "There is no apparent reason why the same argument would not apply if the defendant had been acquitted on the assault charge. However, it is rather difficult to conceive of a prosecution for homicide resulting from an assault where the defendant has been found innocent of committing the assault."[12]

While jeopardy, in its constitutional and common law sense, has a strict application to criminal prosecutions only, a similar doctrine is applicable in both criminal and civil suits, i. e., the doctrine of *res judicata*, or estoppel by judgment.[13] Speaking of the two doctrines, the Court of Appeals has said, "In criminal cases the plea of former jeopardy and *res judicata* are so similar as to be hardly distinguishable, and in many criminal cases, where the plea of former jeopardy was made, the court in discussing the question applied the principles of *res judicata.*"[14] Quoting from Freeman on Judgments[15] the Court adds, " 'There is no reason why a final judgment in a criminal case or proceeding should not, under proper circumstances, be given conclusive effect as an estoppel or bar. The same policy which dictates the rule in civil cases requires it in criminal cases.' "[16]

Briefly stated, the doctrine is that an existing final judgment or decree rendered upon the merits, and without fraud or collusion, by a court of competent jurisdiction, upon a matter within its jurisdiction, is conclusive of the rights of the parties or their privies in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue in the first suit.[17]

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[10] 15 Am. Jur. 66.

[11] 16 C. J. 275.

[12] Note 14 L. R. A. (N. S.) 210. But see the answer to this in the closing paragraphs of this casenote.

[13] Hochheimer, Crimes and Criminal Procedure (2nd Ed.) Sec. 46.

[14] State v. Coblentz, 169 Md. 159, 164, 180 A. 266, 185 A. 350 (1935).

[15] Freeman, Judgments (5th Ed.) Sec. 648.

[16] State v. Coblentz, *supra* note 14, 169 Md. 164. As to judgments in criminal cases as *res judicata* in civil suits and vice versa, see 15 R. C. L. 1000, where it is pointed out that there is a dissimilarity in objects, issues, results, procedure and parties in the two actions, and that different rules of evidence apply, both as to the weight of the evidence and the competency of witnesses, and that therefore the doctrine does not generally apply. See also 34 C. J. 970.

[17] 15 R. C. L. 429.

A judgment on the merits rendered by an inferior court, such as that of a Justice of the Peace, is a bar to another suit between the same parties on the same cause of action, either in another court of the same grade or rank or in any other court,[18] and is conclusive on the matters at issue in the trial, unless, of course, there has been an appeal and reversal. However, here again the principal case may be disposed of on the ground that the verdict of the magistrate was a nullity.

Another doctrine which may be considered here is the common law doctrine of merger. Though this doctrine has been abolished in many states, it presumably still exists in Maryland.[19] The rule is expressed by the proposition that if an act constitutes two crimes of different grades, that of the lower grade is merged in the one of the higher grade; i. e. where the same criminal act constitutes both a felony and a misdemeanor, the misdemeanor is merged into the felony. Under this rule, no conviction of the lesser crime could be had upon indictment for the greater, where the evidence showed that the greater had been committed. Another result of the rule was that prior conviction or acquittal of the misdemeanor could not be pleaded in bar of an indictment for the felony.[20] As applied to a situation such as presented by the principal case, this doctrine would not change the result, because here the felony was not complete at the time the trial for the misdemeanor took place, so there was neither a conviction of the lesser crime under an indictment for the greater, nor was there any evidence, at that time, that the greater had been committed.

Applying the principles set forth above to questions which might arise had the magistrate's judgment in the principal case not been a nullity it must first be noticed that it is possibly only in the case of homicide that a trial could take place before the crime was complete. An attempted homicide may not result in the completed crime until some time later, and the same is the case of assault with intent to murder. In each of these cases the crime becomes complete without any further criminal action on the part of the accused. In the case of other crimes, if the attempt does not result immediately in the completed crime

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[18] 34 C. J. 759.

[19] See Klein v. State, 151 Md. 484, 491, 135 A. 591 (1926), where the Court assumed that the doctrine still existed, with respect to common law felonies but limited it. And see also Gilpin v. State, *supra* n. 3, 142 Md. 468, for a discussion of the doctrine and a statement that the same act must involve both offenses for the application of the doctrine.

[20] 14 Am. Jur. 760; Clark and Marshall, Law of Crimes (3rd Ed.) Sec. 6; 16 C. J. 59.

there can be no completed crime without another attempt, or some further action, on the part of the accused. Is it, then, really inconsistent to have an acquittal for assault and a conviction for murder arising out of the same alleged act? Murder is defined as the unlawful killing of a human being with malice aforethought, express or implied. Malice is implied (among other examples) when an act is wilfully done or a duty wilfully omitted, and the natural tendency of the act or omission is to cause death or great bodily harm. A person may be guilty of murder at common law, although there may have been no actual intent to kill.[21] An assault is an attempt to commit a battery, and intent, either actual or apparent, is an essential of the crime.[22] Thus there can be no conviction of assault without the intent, on the part of the accused, to inflict bodily injury, but a conviction for murder can be had without any intent on the part of the accused to injure anybody.[23] Thus an assault is not a necessary element of murder, though of course it would be present in many cases.

[21] Clark and Marshall, *op. cit. supra* n. 20, Sec. 239.
[22] *Ibid*, Sec. 197.
[23] The principal case involved exactly such a situation. The defendant fired through a closed door.