



WALLER v. FLORIDA
SUPREME COURT OF THE UNITED STATES
397 U.S. 387
April 6, 1970

OPINION: Mr. Chief Justice BURGER...Petitioner was one of a number of persons who removed a canvas mural which was affixed to a wall inside the City Hall of St. Petersburg, Florida. After the mural was removed, the petitioner and others carried it through the streets of St. Petersburg until they were confronted by police officers. After a scuffle, the officers recovered the mural, but in a damaged condition.

The petitioner was charged by the City of St. Petersburg with the violation of two ordinances: first, destruction of city property; and second, disorderly breach of the peace. He was found guilty in the municipal court on both counts, and a sentence of 180 days in the county jail was imposed.

Thereafter an information was filed against the petitioner by the State of Florida charging him with grand larceny. It is conceded that this information was based on the same acts of the petitioner as were involved in the violation of the two city ordinances.

Before his trial in the Circuit Court on the felony charge, petitioner moved in the Supreme Court of Florida...to prevent the second trial, asserting the claim of double jeopardy as a bar. Relief was denied without opinion. Thereafter petitioner was tried in the Circuit Court of Florida by a jury and was found guilty of the felony of grand larceny. After verdict in the state court, he was sentenced to six months to five years less 170 days of the 180-day sentence previously imposed by the municipal court of St. Petersburg, Florida.

On appeal, the District Court of Appeal of Florida considered and rejected petitioner's claim that he had twice been put in jeopardy because prior to his conviction of grand larceny, he had been convicted by the municipal court of an included offense of the crime of grand larceny. The opinion of the District Court of Appeal first explicitly acknowledged that the charge on which

the state court action rested 'was based on the same acts of the appellant as were involved in the violation of the two city ordinances.' Then in rejecting Waller's claim of double jeopardy, the court [referring to precedent] said:

“...Long ago it was decided that an act committed within municipal limits may be punished by city ordinance even though the same act is also proscribed as a crime by a state statute. An offender may be tried for the municipal offense in the city court and for the crime in the proper state court. Conviction or acquittal in either does not bar prosecution in the other.”

...What is before us is the asserted power of the two courts within one State to place petitioner on trial for the same alleged crime.

In *Benton v. Maryland*¹, this Court declared the double jeopardy provisions of the Fifth Amendment applicable to the States, overruling *Palko v. Connecticut*...Florida does not stand alone in treating municipalities and the State as separate sovereign entities, each capable of imposing punishment for the same alleged crime...

Florida seeks to justify this separate sovereignty theory by asserting that the relationship between a municipality and the State is analogous to the relationship between a State and the Federal Government...[T]his Court [has] noted—'Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions.' *Reynolds v. Sims*. Florida has recognized this unity in its Constitution. Article VIII, §2, of the Florida Constitution contains a grant of power to the Florida Legislature respecting municipalities:

- (a) Establishment. Municipalities may be established or abolished and their charters amended pursuant to general or special law...
- (b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services...

Moreover, Art. V, §1, of the Florida Constitution (1885), which does not appear to have been changed in the 1968 Constitutional revision, declares:

'The judicial power of the State of Florida is vested in a supreme Court... and such other courts, including municipal courts...as the legislature may from time to time ordain and establish.'

These provisions of the Florida Constitution demonstrate that the judicial power to try petitioner on the first charges in municipal court springs from the same organic law that created the state court of general jurisdiction in which petitioner was tried and convicted for a felony. Accordingly, the apt analogy to the relationship between municipal and state governments is to be found in the relationship between the government of a Territory and the Government of the

¹ Case 5A-DJ-4 on this website.

United States. The legal consequence of that relationship was settled in *Grafton v. United States*, where this Court held that a prosecution in a court of the United States is a bar to a subsequent prosecution in a territorial court, since both are arms of the same sovereign. In *Grafton* a soldier in the United States Army had been acquitted by a general court-martial convened in the Philippine Islands of the alleged crime of feloniously killing two men. Subsequently, a criminal information in the name of the United States was filed in a Philippine court while those islands were a federal territory, charging the soldier with the same offense committed in violation of local law. When Philippine courts upheld a conviction against a double jeopardy challenge, this Court reversed, resting upon the single-sovereign rationale and distinguishing cases like *Fox v. Ohio*, which sanctioned successive prosecutions by State and Federal Governments for the same acts:

'The government of a state does not derive its powers from the United States, while the Government of the Philippines owes its existence wholly to the United States, and its judicial tribunals exert all their powers by authority of the United States. The jurisdiction and authority of the United States over that territory and its inhabitants, for all legitimate purposes of government, is paramount. So that the cases holding that the same acts committed in a state of the Union may constitute an offense against the United States and also a distinct offense against the state, do not apply here, where the two tribunals that tried the accused exert all their powers under and by authority of the same government—that of the United States.'

Thus *Grafton*, not *Fox v. Ohio*,...controls, and we hold that on the basis of the facts upon which the Florida District Court of Appeal relied petitioner could not lawfully be tried both by the municipal government and by the State of Florida. In this context a 'dual sovereignty' theory is an anachronism, and the second trial constituted double jeopardy violative of the Fifth and Fourteenth Amendments to the United States Constitution...

CONCURRENCE: Mr. Justice BRENNAN...[Not provided.]