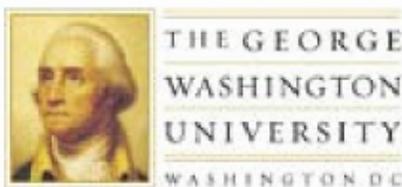


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Fugate v. New Mexico

470 U.S. 904 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

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SUPREME COURT OF THE UNITED STATES

No. 83-6663

CHARLES FUGATE, PETITIONER *v.* NEW MEXICO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
NEW MEXICO

[March 26, 1985]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE POWELL took no part in the decision of this case.

HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 2, 1985

83-6663

RE: No. 83-6361, Manzanares v. New Mexico

MEMORANDUM TO THE CONFERENCE:

We held this case for Fugate v. New Mexico, No. 83-6663, which was affirmed by an equally divided Court on March 26. The instant petition will be on the list for the April 12 Conference.

Petitioner was charged in a county magistrate's court with the misdemeanor offenses of reckless driving, driving while intoxicated, failure to remain at an accident involving death or injury, and failure to have a driver's license. Two weeks later, the district attorney filed an indictment in state district court, a court of general jurisdiction, charging petitioner with the felony of vehicular homicide. The factual basis for the indictment was the same accident upon which the magistrate's court charges were based.

Petitioner pleaded guilty to the charges in the magistrate's court, received a \$500 fine and a 30-day jail sentence, and then filed a motion to dismiss the indictment on the ground of double jeopardy. The district court denied the motion to dismiss but allowed petitioner to take an interlocutory appeal. The intermediate court of appeals reversed, concluding that under the Double Jeopardy Clause petitioner could not be prosecuted for vehicular homicide after being convicted of lesser-included misdemeanor offenses.

The state supreme court reversed. It held that the "jurisdictional exception" established in Diaz v. United States, 223 U.S. 442 (1912), was still good law. Since the magistrate's court did not have jurisdiction to try petitioner for vehicular homicide, the conviction in the magistrate's court did not preclude later prosecution for the felony.

This case squarely presents the issue that we addressed, but were unable to resolve, in Fugate. I think I will join-3 to grant, but I have not yet decided for certain.

Regards,



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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 26, 1985

Re: No. 83-6663 Fugate v. New Mexico

Dear Chief,

I agree with the Per Curiam in this case.

Sincerely,

WRM

The Chief Justice

cc: The Conference

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