

PAYNE *v.* VIRGINIAON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF VIRGINIA

No. 82-6935. Decided July 5, 1984

Held: The Double Jeopardy Clause barred the state-court prosecution and conviction of petitioner for the lesser included offense of robbery that followed his prior conviction for capital murder committed during the perpetration of the robbery.

Certiorari granted; reversed.

PER CURIAM.

This petition for certiorari seeks review of a judgment of the Supreme Court of Virginia rejecting petitioner's double jeopardy challenge to a conviction for robbery which followed a prior conviction for capital murder committed during the perpetration of the robbery while armed with a deadly weapon. In this case, as in *Harris v. Oklahoma*, 433 U. S. 682 (1977) (*per curiam*), where "conviction of a greater crime, murder, cannot be had without conviction of the lesser crime, robbery . . . , the Double Jeopardy Clause bars prosecution for the lesser crime after conviction of the greater one." *Ibid.* See also *In re Nielsen*, 131 U. S. 176, 188 (1889).

Accordingly, the motion for leave to proceed *in forma pauperis* is granted, the petition for writ of certiorari is granted, and the judgment of the Supreme Court of Virginia is reversed. *Harris v. Oklahoma, supra.*

It is so ordered.

REPORTER'S NOTE

The next page is purposely numbered 1201. The numbers between 1062 and 1201 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.
