

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY  
STATE OF GEORGIA**

*Elisa Zarate*  
ELISA ZARATE, Clerk

**STATE OF GEORGIA** : **CASE NO. SU-23-CR-0226**  
:   
**vs.** :   
:   
**TYLER RIDGEWAY,** :   
**Defendant** :

**PLEA IN BAR AND MOTION TO DISMISS**

Comes now the Defendant, through counsel, to file this Plea in Bar and Motion to Dismiss the above-styled case. Defendant asserts that the prosecution of this case should be barred because he has been convicted of theft by receiving as it relates to property taken in the armed robbery alleged in the above-styled indictment and therefore cannot be the principal taker as a matter of law. See U.S. Const. Amend. V, XIV; Ga. Const. Art. I, § I, ¶¶ 1; OCGA §§ 16-1-7; 16-8-7(a); 16-8-2; 16-8-41(a) . In support of this motion Defendant shows the following:

1.

In case number, SU-23-CR-0227, the State of Georgia accused Tyler Ridgeway of committing several crimes on February 19, 2023, including theft by receiving of a red and black Glock 43X, the property of Jyietavious Rivers. The indictment read that “he knew or should have known [it] was stolen” at the time he received it. The State of Georgia convicted Mr. Ridgeway in SU-23-CR-0227 of multiple crimes including that theft by receiving pursuant to a guilty plea on December 8, 2023. In the above-styled indictment Mr. Ridgeway is now accused of being the “principal thief” in an armed robbery where Jyietavious Rivers and two others were robbed and the red and black Glock 43X was stolen.

2.

Georgia courts have repeatedly found that there is an implicit concept within theft by receiving that renders the charge “mutually exclusive” with theft by taking of the same stolen goods. “The offense of theft by receiving is intended to catch the person who buys or receives stolen goods, as distinct from the principal thief. Evidence shows that a defendant stole goods or that he received stolen goods with scienter of the theft.” Sosbee v. State, 155 Ga. App. 196 (1980)(an appeal from a probation revocation hearing reversing the trial court’s finding violation for theft by receiving as a lesser of theft by taking). Similarly, in affirming a trial court’s refusal to charge theft by receiving as a lesser included offense of theft by taking the Court of Appeals wrote, “[o]f course receiving is not a lesser included offense of theft. They are two completely distinct crimes, having different elements, and are, in fact, so mutually exclusive that the thief and the receiver cannot even be accomplices.” Plummer v. State, 126 Ga. Ap. 482 (1972) (citations omitted).

3.

A theft by receiving conviction is not only mutually exclusive with theft by taking but is also mutually exclusive with the crime of armed robbery which requires a taking of property. See Thomas v. State, 261 Ga. 854 (1992); Camsler v. State, 211 Ga. App. 826 (1994). In Thomas a defendant was convicted of armed robbery and theft by receiving of the same car. 261 Ga. 854 (1992). As the remedy, the Court of Appeals held that the armed robbery sentence should stand and vacated the theft by receiving charge. Id. The Georgia Supreme Court reversed the Court of Appeals and ordered a new trial on both charges and instructed that the trial court give a jury instruction that it could convict on

either charge, but not both. Id. Similarly, in Camsler, a defendant was convicted of both armed robbery of a vehicle as well as theft by receiving of that same vehicle. The trial court merged the counts for sentencing. 211 Ga. App. 826 (1994). The defendant motioned the trial court to set aside the convictions and grant him a new trial because the charges were mutually exclusive. Id. The trial court denied the motion yet was reversed by the Court of Appeals who granted the defendant a new trial. Id.

4.

More recent appellate decisions continue to solidify this line of reasoning. See Turner v. State, 353 Ga. App. 741 (2020) (crimes of armed robbery and theft by receiving are mutually exclusive). See also Ingram v. State, 268 Ga.App. 149 (2004); Middleton v. State, 309 Ga. 337 (2020) (The word “retain” in the new theft by receiving statute was not intended to include the “principal thief.” Rather, its inclusion was to cover instances where one comes into possession of stolen property without the requisite knowledge of it being stolen then that person gains the knowledge that the property is stolen and continues to retain possession.)

5.

Thus, since Mr. Ridgeway is convicted and sentenced as the receiver of goods from the robbery, he cannot also be convicted as the principal thief, and he asks that this Court GRANT his plea in bar. See Bonner v. State, 339 Ga. App. 539 (2016)(State was collaterally estopped, or barred, from pursuing prosecution for armed robbery and hijacking of a motor vehicle after defendant plead guilty to theft by receiving of that same vehicle); Clark v. State, 144 Ga. App. 69 (1977)(State was barred, or collaterally

estopped, from trying Clark for burglary when he had already pled guilty to theft by receiving related to the same goods that had been taken in the burglary).

Respectfully submitted this 29<sup>th</sup> day of December, 2023.

/s/ Erin Wallace  
Erin Wallace  
Attorney for the Defendant  
State Bar No. 553400

#### CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Defendant's Plea in Bar and Motion to Dismiss on Deborah Gonzalez, District Attorney for the Western Judicial Circuit, by electronic service to her or one of her duly authorized agents.

This 29<sup>th</sup> day of December, 2023.

/s/ Erin Wallace  
Erin Wallace  
Georgia Bar No.: 553400

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**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY  
STATE OF GEORGIA**

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**CASE NO. SU-23-CR-0226**

**vs.**

**TYLER RIDGEWAY,  
Defendant**

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It is Ordered that all parties appear for Defendant's Plea in Bar and Motion to Dismiss in the above-styled case before the Court on \_\_\_\_\_ at \_\_\_\_:\_\_\_\_ at the \_\_\_\_\_ County Courthouse, in \_\_\_\_\_, GA, Court Room \_\_\_\_\_.

So Ordered this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Honorable Eric W. Norris  
Chief Judge, Superior Courts  
Western Judicial Circuit