

Constitutional Law/Criminal Procedure—Double Jeopardy Does Not Bar Death at Retrial if Initial Sentence is Not an Acquittal—*Sattazahn v. Pennsylvania*, 537 U.S. 101 (2003)

The Fifth Amendment of the United States Constitution states that the law shall not place a person's life in jeopardy twice for any prior convictions or prior acquittals.¹ Courts may impose harsher sentences at retrial after a defendant has successfully appealed his original conviction, yet the Supreme Court has extended double jeopardy protection to sentencing proceedings that have similar characteristics to trials.² In *Sattazahn v. Pennsylvania*,³ the Supreme Court determined whether the Double Jeopardy Clause barred the death sentence at the retrial of a defendant who initially received a punishment of life imprisonment.⁴ The Court held that a death sentence upon retrial did not violate double jeopardy principles because the initial life sentence was statutorily mandated as a result of a hung jury and, thus, did not constitute an acquittal.⁵

On April 12, 1987, David Allen Sattazahn and his accomplice, Jeffrey Hammer, shot and killed a restaurant manager after trying to rob him of his bank deposit bag.⁶ A few years later, the Commonwealth of Pennsylvania brought Sattazahn to trial seeking the death penalty, and the jury convicted him of first, second, and third-degree murder.⁷ At the sentencing hearing, the

1. U.S. CONST. amend. V. The Fifth Amendment states in pertinent part that "no person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." *Id.*

2. *See Bullington v. Missouri*, 451 U.S. 430, 438 (1981) (imposing death sentence at retrial violates double jeopardy when initial life sentence served as acquittal). After the jury found the defendant guilty of capital murder at his first trial, there was a separate sentencing hearing, in which the prosecution had the burden of establishing certain facts beyond a reasonable doubt in order to justify a harsher punishment. *Id.* at 439. The jury's decision of life imprisonment served as an acquittal and, therefore, double jeopardy barred the prosecution from seeking the death penalty at retrial. *Id.* at 444; *see also Arizona v. Rumsey*, 467 U.S. 203, 211 (1984) (emphasizing double jeopardy principles regarding sentencing as expounded in *Bullington*). The imposition of the death penalty at the defendant's second trial violated the Double Jeopardy Clause because the defendant's initial life sentence was an acquittal on the merits. *Rumsey*, 467 U.S. at 211.

3. 537 U.S. 101 (2003).

4. *Id.* at 103 (considering whether imposition of life sentence pursuant to Pennsylvania law constituted acquittal).

5. *Id.* at 109 (explaining initial life sentence did not absolve defendant of factors necessary to inflict death).

6. *Commonwealth v. Sattazahn*, 631 A.2d 597, 601 (Pa. Super. Ct. 1993) (describing factual details surrounding murder), *aff'd sub nom. Sattazahn v. Pennsylvania*, 537 U.S. 101 (2003). More than two years after the killing, the police questioned Jeffrey Hammer, who implicated Sattazahn in the robbery and murder of the restaurant manager. *Id.* With the information that the police obtained from Hammer and other incriminating evidence that the officials discovered, the State was able to prosecute the defendant for first-degree murder. *Id.*

7. 537 U.S. at 103 (holding defendant guilty of other charges in addition to murder); *see Commonwealth v. Sattazahn*, 631 A.2d 597, 600 (Pa. Super. Ct. 1993) (sentencing Sattazahn to consecutive terms of

prosecution brought forth evidence of an aggravating circumstance in order to justify a death sentence, but the jury was unable to agree on the death penalty.⁸ Pursuant to Pennsylvania law, the judge dismissed the deadlocked jury and imposed a punishment of life imprisonment.⁹ The defendant appealed, and the Pennsylvania Superior Court reversed the conviction and remanded the case due to erroneous jury instructions given at the first trial.¹⁰

At the retrial, the prosecution again sought the death penalty and introduced an aggravating circumstance not originally presented.¹¹ After hearing the evidence, the jury convicted the defendant of first-degree murder and unanimously imposed the death penalty.¹² Sattazahn appealed on double jeopardy principles, but the Pennsylvania Supreme Court affirmed the decision, ruling that the Double Jeopardy Clause did not bar the State from seeking the death penalty at retrial.¹³ The United States Supreme Court then held that the death sentence did not violate Fifth Amendment double jeopardy protection.¹⁴ The Court reasoned that jeopardy never terminated for Sattazahn because his initial life sentence was not an acquittal of the factors necessary to impose death.¹⁵

The Double Jeopardy Clause of the United States Constitution stands for the principle that the laws of this country should not allow the State to make repeated attempts to convict an individual for a single alleged offense.¹⁶ The

imprisonment for robbery, conspiracy, and possession of criminal instruments), *aff'd sub nom.* Sattazahn v. Pennsylvania, 537 U.S. 101 (2003).

8. 537 U.S. at 104 (demonstrating aggravating circumstance by showing defendant murdered victim while also committing felony). To rebut the prosecution's argument, Sattazahn presented his age and the fact that he did not have a significant criminal history at the time of the murder. *Id.* According to Pennsylvania law, the jury must impose death if it unanimously finds at least one aggravating circumstance and no mitigating circumstances or if it finds one or more aggravating circumstances that outweigh any mitigating circumstances. *Id.* (citing 42 PA. CONS. STAT. § 9711(c)(1)(iv) (2002)).

9. 537 U.S. at 104-05 (dismissing jury after making sure it could not come to agreement as to death sentence). Pursuant to Pennsylvania law, the judge must enter a life sentence if the jury cannot come to a unanimous agreement to impose the death penalty. *Id.* at 104.

10. Commonwealth v. Sattazahn, 631 A.2d 597, 606 (Pa. Super. Ct. 1993) (discussing error in jury instructions regarding defendant's intent), *aff'd sub nom.* Sattazahn v. Pennsylvania, 537 U.S. 101 (2003). The Pennsylvania Superior Court reversed Sattazahn's original conviction because it held that the trial judge was wrong to instruct the jury that the defendant's possession of a firearm was evidence of his intent to commit the crime. *Id.* at 604.

11. 537 U.S. at 105 (establishing second aggravating circumstance by showing defendant's prior felony convictions involved violent threats).

12. *Id.* (noting jury's undivided decision to impose death sentence).

13. *Id.* (discussing Pennsylvania Supreme Court's judgment to affirm the jury's guilty verdict and death sentence).

14. *Id.* at 109 (holding initial ruling did not constitute acquittal).

15. 537 U.S. at 109 (describing acquittal concept as touchstone for double jeopardy protection). The sentencing judgment in the first trial was not an acquittal based on findings that were sufficient to legally entitle the defendant to a life sentence. *Id.*

16. See *Green v. United States*, 355 U.S. 184, 187-88 (1957) (explaining state's continuous attempts to convict individual causes unfair embarrassment, anxiety, and insecurity); see also *United States v. Scott*, 437 U.S. 82, 87 (1978) (demonstrating state's repeated endeavors to convict defendant causes harm). The purpose

Supreme Court, however, has recognized that double jeopardy does not bar a second prosecution when the defendant has successfully appealed his original conviction, or when there has been a manifest necessity for the court to declare a mistrial.¹⁷ In fact, there has also been a line of cases demonstrating that double jeopardy protection does not prohibit the imposition of a more severe sentence upon reconviction of a defendant who has had his initial judgment set aside.¹⁸

Although there is no absolute bar to punishing a defendant more severely at a retrial, double jeopardy standards apply when the sentencing hearing compares to a trial on the issue of guilt or innocence.¹⁹ In *Bullington v. Missouri*,²⁰ the Court determined that a life imprisonment sentence, given at a proceeding that resembled a trial, was an acquittal of the factors necessary to impose death.²¹ The jury's decision in favor of life imprisonment demonstrated the prosecution's failure to prove beyond a reasonable doubt the aggravating circumstances necessary to inflict death.²² The Court, therefore, held that double jeopardy barred the imposition of the death penalty at retrial because the first jury acquitted the defendant of that sentence.²³

of the Double Jeopardy Clause is "to protect the accused against the agony and risks attendant upon undergoing more than one criminal trial for any single offense." *Scott*, 437 U.S. at 105 (Brennan, J., dissenting). See generally Peter Laterza, *Double Jeopardy*, 73 GEO. L.J. 541 (1984) (illustrating double jeopardy protection).

17. See *Stroud v. United States*, 251 U.S. 15, 18 (1919) (granting defendant new trial after appeal of conviction does not place defendant twice in jeopardy). Where the defendant invoked the court to declare a mistrial and order a new trial, his life was not placed in jeopardy twice. *Id.*; see also *United States v. Perez*, 22 U.S. (9 Wheat) 579, 580 (1824) (declaring court's discharge of jury resulted from manifest necessity). When manifest necessity requires a court to dismiss the jury, there is no legal bar to a future trial. *Id.* See generally Michael E. Lavine, *Double Jeopardy*, 74 GEO. L.J. 718 (1986) (discussing manifest necessity doctrine); 8 FED. PROC. § 22.352 (2003) (defining means of declaring mistrial).

18. *North Carolina v. Pearce*, 395 U.S. 711, 719 (1969) (explaining judges' power to impose harsher sentence depends on case's circumstances). The Court emphasizes that the guarantee against double jeopardy does not restrict the length of one's sentence after reconviction. *Id.*; see Lee R. Russ, J.D., Annotation, *Power of Court to Increase Severity of Unlawful Sentence—Modern Status*, 28 A.L.R.4th 147 (1984) (pointing to defendant's conduct as deciding factor for increasing sentence upon retrial).

19. *Bullington v. Missouri*, 451 U.S. 430, 438 (1981) (proving elements beyond reasonable doubt to justify imposition of death makes sentencing hearing-like trial); see also Laterza, *supra* note 16, at 569-70 (reviewing cases in which sentencing proceedings resemble trials).

20. 451 U.S. 430 (1981).

21. *Bullington v. Missouri*, 451 U.S. 430, 445 (1981) (concluding jury not convinced that prosecution proved its case during sentencing proceeding); see also Lavine, *supra* note 17, at 734 (commenting on acquittal in capital sentencing proceedings); cf. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984) (arguing Arizona capital sentencing hearing not distinguishable from Missouri proceeding for double jeopardy purposes).

22. *Bullington v. Missouri*, 451 U.S. 430, 438 (1981) (arguing jury acquitted defendant from facing death penalty); accord *Arizona v. Rumsey*, 467 U.S. 203, 207-08 (1984) (failing to identify aggravating factors at sentencing served as acquittal of death penalty); cf. *Ring v. Arizona*, 536 U.S. 584, 588 (2002) (concluding jury must make determination of factors necessary to increase punishment); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (describing burden of proof regarding criminal elements increasing punishment). *Contra Rumsey*, 467 U.S. at 214 (Rehnquist, J., dissenting) (arguing state did not fail to prove at least one aggravating circumstance).

23. *Bullington v. Missouri*, 451 U.S. 430, 445 (1981) (holding defendant's life would be placed in jeopardy twice if faced with death at retrial); accord *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984) (imposing

The key to understanding double jeopardy, as evidenced by the line of cases aligned with *Bullington*, is deciding whether or not there has been an acquittal on the merits of the issue regarding death.²⁴ Double jeopardy protection arises when the jury or judge determines that the prosecution failed to prove the defendant deserved a death sentence.²⁵ Yet, when a jury cannot unanimously consent to impose death and the judge must dismiss the deadlocked jury, courts generally agree that a life sentence does not constitute an acquittal.²⁶ Under these circumstances, the Double Jeopardy Clause does not prohibit the State from seeking death for a defendant who has been granted a new trial.²⁷

In *Sattazahn v. Pennsylvania*, the Supreme Court applied the *Bullington* “acquittal” analysis regarding double jeopardy protection in capital sentencing.²⁸ The Court reasoned that in trial-like sentencing hearings, double jeopardy protects a defendant from facing the death penalty upon retrial if the jury acquits him of the findings establishing death sentence eligibility.²⁹ The Court held that *Sattazahn* never enjoyed acquittal from facing death because the deadlocked jury did not make conclusions regarding aggravating circumstances.³⁰ Moreover, Pennsylvania law required the judge to enter a

life sentence acted as acquittal on merits and bars death at retrial).

24. See *Poland v. Arizona*, 476 U.S. 147, 148 (1986) (citing *Bullington*); see also Clayborne S. Stone, *Sattazahn v. Pennsylvania*, 56 ARK. L. REV. 255, 256 (2003) (explaining key double jeopardy issue in capital sentencing); *No Double Jeopardy Bar to Prosecution Seeking the Death Penalty on Retrial After Conviction Reversed: Sattazahn v. Pennsylvania*, 171 N.J.L.J. 187 (2003) (explaining acquittal determines entitlement to life sentence).

25. See *Poland v. Arizona*, 476 U.S. 147, 154 (1986) (determining whether prosecution convinced jury defendant deserves death); see also Jennifer L. Czernecki, *The Double Jeopardy Clause of the Pennsylvania Constitution Does Not Bar the Death Penalty Upon Retrial After the Trial Judge Grants a Life Sentence on Behalf of a Hung Jury: Commonwealth v. Sattazahn*, 40 DUQ. L. REV. 127, 143 (2001) (explaining prosecution’s duty to prove case in sentencing hearings).

26. See *Commonwealth v. Martorano*, 634 A.2d 1063, 1070 (Pa. 1993) (commenting on hung jury’s inability to make decision on merits); see also Craig M. Bradley, *Death and Double Jeopardy*, 39 A.P.R. TRIAL 66, 66 (2003) (asserting prosecution can seek death penalty at retrial in case of jury deadlock); Czernecki, *supra* note 25, at 131 (discussing default judgment and its effect on double jeopardy after hung jury). But see *Richardson v. United States*, 468 U.S. 317, 326-27 (1984) (Brennan, J., dissenting) (looking at reason hung jury unable to render verdict). The defendant was entitled to an acquittal because the jury’s inability to reach a verdict resulted from the prosecution’s failure to present the factors necessary to impose death. *Id.*

27. See *Commonwealth v. Martorano*, 634 A.2d 1063, 1070 (Pa. 1993) (discussing judge’s lack of discretion to impose life imprisonment). A default judgment entered by the judge does not implicate a double jeopardy bar to a death sentence at the defendant’s retrial. *Id.* But see *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 565 (1977) (holding that judgment of acquittal entered by judge after hung jury barred death sentence at retrial).

28. See 537 U.S. at 106 (exploring *Bullington* reasoning); see also *supra* note 21 and accompanying text (discussing theory of acquittal).

29. 537 U.S. at 107 (elaborating on principles addressed in *Rumsey*); see *id.* at 117 (O’Connor, J., concurring) (explaining acquittal takes place when prosecution fails to prove its case); see also *supra* note 22 and accompanying text (concluding failure to find aggravating factors entitles defendant to life imprisonment).

30. 537 U.S. at 111-13 (arguing neither judge nor jury made findings on aggravating or mitigating circumstances). But see *Richardson v. United States*, 468 U.S. 317, 326-27 (1984) (Brennan, J., dissenting) (explaining jury’s inability to reach decision on death showed prosecution did not prove its case).

default judgment of life imprisonment.³¹ The Court concluded that this result did not establish a legal entitlement to a life sentence.³²

The Court further explained that any factor subjecting an accused to the death penalty essentially serves as an element of a greater offense that must be established beyond a reasonable doubt.³³ The Court noted that if the jury unanimously agreed that the prosecution failed to prove any aggravating factors, double jeopardy protection would have attached to the acquittal of the aggravating circumstances necessary to impose death.³⁴ The Court, however, held that the jury never made any findings as to aggravating and mitigating circumstances.³⁵ Thus, the Double Jeopardy Clause did not bar the subsequent imposition of the death penalty because there was never an acquittal of that harsher sentence.³⁶

The Supreme Court in *Sattazahn* correctly concluded that there was never an acquittal of the factors necessary to impose death.³⁷ In making this determination, the Court accurately applied precedent with respect to the prosecution's burden of proof in capital sentencing procedures similar to trials based on guilt or innocence.³⁸ Furthermore, the Court properly held that the jury's inability to agree on any aggravating or mitigating circumstances at the sentencing hearing did not constitute an acquittal of the death penalty.³⁹

Nonetheless, the fact that there was no acquittal does not establish that jeopardy did not terminate for *Sattazahn*.⁴⁰ In holding that double jeopardy did

31. 537 U.S. at 109-10 (determining initial life sentence did not constitute acquittal).

32. *Id.* at 110 (holding default judgment does not trigger double jeopardy protection); see *No Double Jeopardy Bar to Prosecution Seeking the Death Penalty on Retrial After Conviction Reversed: Sattazahn v. Pennsylvania*, 171 N.J.L.J. 187 (2003) (explaining without acquittal, statutorily required sentence does not entitle defendant to life). *Contra* 537 U.S. at 119-24 (Ginsburg, J., dissenting) (arguing trial court's entry of life imprisonment acts as final judgment on merits). The judge's entry of life imprisonment pursuant to Pennsylvania law is a final judgment that legally entitles the defendant to protection under double jeopardy. *Id.* at 124.

33. 537 U.S. at 111-12 (portraying aggravating circumstance as element of offense); see *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (explaining burden of proof regarding criminal elements). The Court held in *Apprendi* that the prosecution must prove beyond a reasonable doubt any fact that increases the punishment for a crime. *Apprendi*, 530 U.S. at 490; see also *Ring v. Arizona*, 536 U.S. 584, 588 (2002) (emphasizing jury, not judge, must make determination regarding factors that increase sentence).

34. 537 U.S. at 112 (explaining how state's failure to prove aggravating factors would have acquitted *Sattazahn* of greater offense). *But see id.* at 116-17 (O'Connor, J., concurring) (disagreeing with *Apprendi*'s comparison of aggravating factors and elements of crime).

35. *Id.* at 113 (holding acquittal cannot result without findings regarding aggravating or mitigating circumstances).

36. *Id.* (concluding no double jeopardy bar against seeking death).

37. See *supra* note 29 and accompanying text (stating acquittal takes place when prosecution fails to prove aggravating circumstances beyond reasonable doubt).

38. See *supra* note 22 and accompanying text (discussing prosecution's burden of proof in capital sentencing hearings).

39. See *supra* note 30 and accompanying text (demonstrating jury did not acquit defendant).

40. See 537 U.S. at 119 (Ginsburg, J., dissenting) (explaining other means for double jeopardy protection to apply). "[J]eopardy can terminate in circumstances other than an acquittal." *Id.*

not bar the death penalty after the judge entered a statutorily mandated life sentence, the Court dishonored Fifth Amendment principles regarding final judgments.⁴¹ Pennsylvania law required the judge to enter a life imprisonment sentence.⁴² The Court should have protected the integrity of that final judgment, as well as the virtue of future judgments of the courts, by enforcing double jeopardy protection at the retrial.⁴³

The Court placed Sattazahn's life in jeopardy twice by holding that the prosecution could seek the death penalty even after the laws of the State ordered life.⁴⁴ This decision required Sattazahn to "run the gauntlet" on death, not once, but twice.⁴⁵ Moreover, this ruling subjected him to the risk, anxiety, and insecurity that the Double Jeopardy Clause seeks to prevent.⁴⁶ The Court's holding will undoubtedly present an inevitable predicament for defendants, who wish to appeal their convictions after being sentenced to life but are faced with the fear of being exposed to death upon retrial.⁴⁷

The *Sattazahn* Court considered whether double jeopardy bars the death sentence upon the retrial of a defendant who initially received a statutory life sentence. By holding that there was no double jeopardy violation, the Court questioned the finality of legally mandated judgments. Consequently, this decision placed Sattazahn's life and limb twice in jeopardy.

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41. See *id.* at 119-21 (Ginsburg, J., dissenting) (describing finality of life sentence); see also *United States v. Scott*, 437 U.S. 82, 92 (1978) (elaborating on significance of final judgments). The *Scott* Court stated that "the primary purpose of the Double Jeopardy Clause was to protect the integrity of a final judgment." *United States v. Scott*, 437 U.S. at 92; *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 567 (1977) (concluding Double Jeopardy Clause protects court's final judgment).

42. *Supra* note 9 and accompanying text (explaining Pennsylvania law regarding capital sentencing).

43. See 537 U.S. at 119-24 (Ginsburg, J., dissenting) (asserting double jeopardy should have protected final judgment). A trial-terminating judgment for life establishes a legal entitlement to double jeopardy protection. *Id.*

44. See *id.* at 125-26 (Ginsburg, J., dissenting) (arguing jeopardy had terminated for Sattazahn after initial sentence).

45. *Id.* (Ginsburg, J., dissenting) (explaining Sattazahn's guilt had already been submitted to first jury); see also *Green v. United States*, 355 U.S. 184, 190 (1957) (illustrating perils of facing trial twice).

46. 537 U.S. at 123 (Ginsburg, J., dissenting) (quoting *Green* regarding purpose of Double Jeopardy Clause); see also *Green v. United States*, 355 U.S. 184, 187-88 (1957) (declaring prohibition of double jeopardy protects accused from state of anxiety and insecurity).

47. See 537 U.S. at 126 (Ginsburg, J., dissenting) (describing defendant's dilemma in choosing to appeal life sentence). By not extending double jeopardy protection to a defendant who has received a statutorily mandated life sentence, the Court's decision has the following effect: "a defendant in Sattazahn's position must relinquish either her right to file a potentially meritorious appeal, or her state-granted entitlement to avoid the death penalty." *Id.*