SUPREME COURT OF THE UNITED STATES

No. 01–7574

DAVID ALLEN SATTAZAHN, PETITIONER *v.* PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[January 14, 2003]

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

This case concerns the events that "terminat[e] jeopardy" for purposes of the Double Jeopardy Clause. *Richardson* v. *United States,* 468 U. S. 317, 325 (1984). The specific controversy before the Court involves the entry of final judgment, as mandated by state law, after a jury deadlock. The question presented is whether a final judgment so entered qualifies as a jeopardy-terminating event. The Court concludes it does not. I would hold that it does.

When a Pennsylvania capital jury deadlocks at the sentencing stage of a proceeding, state law requires the trial court to enter a judgment imposing a life sentence. See 42 Pa. Cons. Stat. §9711(c)(1)(v) (Supp. 2002). Ordinarily, a judgment thus imposed is final. The government may neither appeal the sentence nor retry the sentencing question before a second jury. See Brief for Petitioner 7; Tr. of Oral Arg. 26. The sentencing question can be retried—if retrial is not barred by the Double Jeopardy Clause—only if the defendant successfully appeals the underlying conviction and is convicted again on retrial.[1]

[1] When a typical criminal jury is unable to agree on a verdict, in con-

The Court today holds that the state-mandated entry of a life sentence after a jury deadlock, measured against the Double Jeopardy Clause, does not block retrial of the life or death question. The Court so rules because the life sentence, although final under state law, see *id*., at 25–26, is not the equivalent of "an acquittal on the merits," *ante*, at 6 (quoting *Arizona* v. *Rumsey,* 467 U. S. 203, 211 (1984)). Our double jeopardy case law does indeed "attac[h] particular significance to an acquittal," *United States* v. *Scott,* 437 U. S. 82, 91 (1978); that jurisprudence accords "absolute finality to a jury's *verdict* of acquittal[,] no matter how erroneous its decision," *Burks* v. *United States,* 437 U. S. 1, 16 (1978). And, as the Court stresses, the hung jury in Sattazahn's sentencing proceeding did not "acqui[t]" him "on the merits." *Ante*, at 6 (internal quotation marks omitted). But these two undebatable points are not inevitably dispositive of this case, for our decisions recognize that jeopardy can terminate in circumstances other than an acquittal. Cf. *Richardson*, 468 U. S., at 325 ("[T]he Double Jeopardy Clause by its terms applies only if there has been some event, *such as* an acquittal, which terminates the original jeopardy." (Emphasis added.)).

In no prior case have we decided whether jeopardy is terminated by the entry of a state-mandated sentence when the jury has deadlocked on the sentencing question. As I see it, the question is genuinely debatable, with tenable argument supporting each side. Comprehending our double jeopardy decisions in light of the underlying purposes of the Double Jeopardy Clause, I conclude that jeopardy does terminate in such circumstances. I would hold, as herein explained, that once the trial court entered

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trast, the judge declares a mistrial and the prosecutor has the immediate right to reprosecute the counts on which the jury hung. See, *e.g.*, *Richardson* v. *United States,* 468 U. S. 317, 318, 325 (1984); *United States* v. *Martin Linen Supply Co.,* 430 U. S. 564, 570 (1977).

a final judgment of life for Sattazahn, the Double Jeopardy Clause barred Pennsylvania from seeking the death penalty a second time.

I

The standard way for a defendant to secure a final judgment in her favor is to gain an acquittal.[2] This case involves the atypical situation in which a defendant prevails by final judgment *without* an acquittal. Unusual as the situation is, our double jeopardy jurisprudence recognizes its existence. In *Scott*, the Court stated that the "primary purpose" of the Double Jeopardy Clause is to "protect the integrity" of final determinations of guilt or innocence. 437 U. S., at 92. We acknowledged, however, that "this Court has also developed a body of law guarding the separate but related interest of a defendant in avoiding multiple prosecutions even where no final determination of guilt or innocence has been made." *Ibid*. "Such interests," we observed, "may be involved in two different situations: the first, in which the trial judge declares a mistrial; the second, in which the trial judge terminates the proceedings favorably to the defendant on a basis not related to factual guilt or innocence." *Ibid*.

The first category—mistrials—is instructive, although

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[2]The Court has many times said that the Double Jeopardy Clause protects the integrity of "final judgments." See, *e.g.*, *Crist* v. *Bretz,* 437 U. S. 28, 33 (1978) ("A primary purpose" served by the Double Jeopardy Clause is "akin to that served by the doctrines of *res judicata* and collateral estoppel—to preserve the finality of judgments."); *United States* v. *Scott,* 437 U. S. 82, 92 (1978) ("the primary purpose of the Double Jeopardy Clause was to protect the integrity of a final judgment"). In such declarations, the Court appears to have used "final judgment" interchangeably with "acquittal." See *Crist*, 437 U. S., at 33 (referring to the English common-law rule that "a defendant has been put in jeopardy only when there has been a conviction or an acquittal—after a complete trial"); *Scott*, 437 U. S., at 92 (equating the term "final judgment" with a "final determination of guilt or innocence").

the case at hand does not fit within that category. In deciding whether reprosecution is permissible after a mistrial, "this Court has balanced the valued right of a defendant to have his trial completed by the particular tribunal summoned to sit in judgment on him against the public interest in insuring that justice is meted out to offenders." *Ibid.* (internal quotation marks and citation omitted). Weighing these interests, we have decided that mistrials declared on the motion of the prosecution or *sua sponte* by the court terminate jeopardy unless stopping the proceedings is required by "manifest necessity." *Id.*, at 93–94; see, *e.g.*, *Downum* v. *United States,* 372 U. S. 734, 737–738 (1963). A hung jury, the Court has long recognized, meets the "manifest necessity" criterion, *i.e.*, it justifies a trial court's declaration of a mistrial and the defendant's subsequent reprosecution. *Arizona* v. *Washington,* 434 U. S. 497, 509 (1978). Retrial is also permissible where "a *defendant* successfully seeks to avoid his trial prior to its conclusion by a motion for mistrial," *Scott*, 437 U. S., at 93, unless the motion is intentionally provoked by the government's actions, *id.*, at 94. Ordinarily, "[s]uch a motion by the defendant is deemed to be a deliberate election on his part to forgo his valued right to have his guilt or innocence determined before the first trier of fact." *Id.*, at 93.

The second category described in *Scott*—"termination of [a] trial in [a defendant's] favor before any determination of factual guilt or innocence," *id.*, at 94—is distinguished from the first based on the quality of finality a termination order imports. "When a trial court declares a mistrial, it all but invariably contemplates that the prosecutor will be permitted to proceed anew notwithstanding the defendant's plea of double jeopardy." *Id.*, at 92. When a motion to terminate is granted, in contrast, the trial court "obviously contemplates that the proceedings will terminate then and there in favor of the defendant." *Id.*, at 94. In

Scott, for example, the trial court granted the defendant's motion to dismiss one count of the indictment, prior to its submission to the jury, on the ground of preindictment delay. If the prosecution had wanted to "reinstate the proceedings in the face of such a ruling," it could not simply have refiled the indictment; instead, it would have had to "seek reversal of the decision of the trial court" by pursuing an appeal. *Ibid.*[3]

Sattazahn's case falls within *Scott*'s second category. After the jury deadlocked at the sentencing stage, no mistrial was declared, for Pennsylvania law provided that the trial proceedings would terminate "then and there" in Sattazahn's favor. The government could not simply retry the sentencing issue at will. The hung jury in Sattazahn's case did not "mak[e] . . . completion" of the first proceeding "impossible," *Wade* v. *Hunter,* 336 U. S. 684, 689 (1949); instead, Pennsylvania law *required* the judge to bring that proceeding to a conclusion by entering a final judgment imposing a life sentence, see 42 Pa. Cons. Stat. §9711(c)(1)(v) (Supp. 2002).

Double jeopardy law with respect to *Scott*'s second category is relatively undeveloped. As observed at the outset, see *supra*, at 2, we have never before decided whether jeopardy terminates upon the entry of a state-mandated final judgment favorable to a defendant *after* a jury deadlocks. We have, however, addressed the termination of a trial *prior* to submission of the case to the jury. *Scott* was such a case and, as the Court underscores, *ante*, at 12, that decision denied double jeopardy protection. In al-

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[3] When this Court has considered dismissals of indictments that contemplate the possibility of immediate reprosecution without an appeal, it has analyzed them as mistrials. See *Lee* v. *United States,* 432 U. S. 23, 30 (1977) (dismissal based on insufficient indictment treated as mistrial for double jeopardy purposes because government could simply file new indictment without appealing dismissal).

lowing a second prosecution in *Scott*, however, the Court stressed that the defendant "deliberately ch[ose] to seek termination of the proceedings against him on a basis unrelated to factual guilt or innocence," *i.e.*, the prosecution's preindictment delay, 437 U. S., at 98–99: Scott "successfully undertook to persuade the trial court not to submit the issue of guilt or innocence to the jury . . . empaneled to try him," *id.*, at 99. Although holding that the Double Jeopardy Clause "does not relieve a defendant from the consequences of his voluntary choice," *ibid.*, the Court reiterated the underlying purpose of the Clause: to prevent the State from making "repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity," *id.*, at 95 (quoting *Green* v. *United States,* 355 U. S. 184, 187 (1957)).

The ruling in *Scott* placing the defendant in that case outside the zone of double jeopardy protection, in sum, was tied to the absence of a completed first trial episode and to the defendant's choice to abort the initial trial proceedings. "[T]he Government," we explained, "was quite willing to continue with its production of evidence . . ., but the defendant elected to seek termination of the trial on grounds unrelated to guilt or innocence." 437 U. S., at 96. "This is scarcely a picture of an all-powerful state relentlessly pursuing a defendant who had either been found not guilty or who had at least insisted on having the issue of guilt submitted to the first trier of fact." *Ibid.*

II

Scott, it is true, did not home in on a case like Sattazahn's. The Court's reasoning, nevertheless, lends credence to the view that a trial-terminating judgment for life, not prompted by a procedural move on the defendant's part, creates a legal entitlement protected by the Double

Jeopardy Clause. Cf. *Rumsey*, 467 U. S., at 211 (judgment based on factual findings sufficient to establish "legal entitlement" to a life sentence bars retrial). *Scott* recognized that defendants have a double jeopardy interest in avoiding multiple prosecutions even when there has been no determination of guilt or innocence, and that this interest is implicated by preverdict judgments terminating trials. 437 U. S., at 92. The interest in avoiding a renewed prosecution following a final judgment is surely engaged here. Sattazahn's life sentence had significantly greater finality than the dismissal for preindictment delay in *Scott*, for under Pennsylvania law, as noted earlier, see *supra*, at 1, the government could not have sought to retry the sentencing question even through an appeal.

Moreover—and discrete from the Court's analysis in *Scott*—the perils against which the Double Jeopardy Clause seeks to protect are plainly implicated by the prospect of a second capital sentencing proceeding. A determination that defendants in Sattazahn's position are subject to the "ordeal" of a second full-blown life or death trial "compel[s] [them] to live in a continuing state of anxiety and insecurity." *Green*, 355 U. S., at 187.[4]

Despite the attendant generation of anxiety and insecurity, we have allowed retrial after hung jury mistrials in order to give the State "one complete opportunity to convict those who have violated its laws." *Washington*, 434 U. S., at 509; see *Wade*, 336 U. S., at 689 ("a defendant's valued right to have his trial completed by a particular

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[4] The Court identifies policy reasons why a legislature might prefer to provide for the entry of a judgment that could be reopened should the defendant mount a successful appeal. See *ante*, at 8–9, 13. It does not automatically follow, however, that such a provisional judgment would be compatible with the Double Jeopardy Clause. Cf. *infra*, at 10–11 (urging that the prospect of a second death penalty proceeding heightens double jeopardy concerns).

tribunal must in some instances be subordinated to the public's interest in fair trials designed to end in just judgments"). But here, the State has already had such an opportunity: The prosecution presented its evidence to the jury, and after the jury deadlocked, final judgment was entered at the direction of the state legislature itself. This was not an instance in which "the Government was quite willing to continue with its production of evidence," but was thwarted by a defense-proffered motion. *Scott*, 437 U. S., at 96.

We also sanctioned retrial in *Scott*, even though that case involved a final adjudication. But there, the defendant voluntarily avoided subjecting himself to a determination of guilt or innocence in the first proceeding; he did so by successfully moving, prior to submission of the case to the jury, for dismissal of the count in question because of preindictment delay. *Ibid.*; see *Green*, 355 U. S., at 188 (suggesting that double jeopardy protection does not apply if defendant consents to dismissal of his first jury). That was not the situation here: Unlike Scott, Sattazahn did not successfully avoid having the question of his guilt or innocence submitted to the first jury. The "issue of guilt" in his case indeed was "submitted to the first trier of fact." *Scott*, 437 U. S., at 96. Sattazahn was thus "forced to run the gantlet once" on death. *Green*, 355 U. S., at 190. Nor did Sattazahn himself bring about termination of his first trial.[5] Once the jury deadlocked, state law directly man-

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[5]The governing statute provides that "the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment." 42 Pa. Cons. Stat. §9711(c)(1)(v) (Supp. 2002). In Sattazahn's case, after the jury had deliberated for about 3½ hours, the judge announced that he had "received a communication from the foreperson indicating this jury is hopelessly deadlocked." App. 22. He then stated: "I will bring the jury down and inquire of the foreperson and the jury whether or not any further

dated that the trial end. In short, the reasons we thought double jeopardy protection did not attach in *Scott* are absent here.[6]

I recognize that this is a novel and close question: Sattazahn was not "acquitted" of the death penalty, but his case was fully tried and the court, on its own motion, entered a final judgment—a life sentence—terminating the trial proceedings. I would decide the double jeopardy issue in Sattazahn's favor, for the reasons herein stated, and giving weight to two ultimate considerations. First, the Court's holding confronts defendants with a perilous choice, one we have previously declined to impose in other circumstances. See *Green*, 355 U. S., at 193–194. Under

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deliberations would be productive." *Ibid.* Only at that point did Sattazahn move "that the jury be discharged" and that a life sentence be entered under §9711(c)(1)(v). *Ibid.* The judge did not grant Sattazahn's motion. Instead, he conducted an inquiry to determine whether the jury was "hopelessly deadlocked"; he then found that it was, discharged the jury, and announced that "by virtue of the law" he would enter a life sentence. App. 23–24. The judge, at that stage, never referred back to Sattazahn's motion. As I read this record, the judge's decision to conduct an inquiry, discharge the jury, and enter a life sentence was prompted not by a defensive motion, but simply by the jury's announcement that it was deadlocked, just as the statute instructs.

[6]We have also held that the Double Jeopardy Clause does not bar imposition of a greater sentence on retrial if a defendant successfully appeals a conviction. See, *e.g.*, *North Carolina* v. *Pearce,* 395 U. S. 711 (1969); *United States* v. *DiFrancesco,* 449 U. S. 117 (1980). "[T]he basic design of the double jeopardy provision . . . as a bar against repeated attempts to convict, with consequent subjection of the defendant to embarrassment, expense, anxiety, and insecurity," has "no significant application to the prosecution's . . . right to review a sentence." *Id.*, at 136. This Court has determined, however, that for purposes of the Double Jeopardy Clause, capital sentencing proceedings involving proof of one or more aggravating factors are to be treated as trials of separate *offenses*, not mere sentencing proceedings. See *ante*, at 4–7, 9–10; *Ring* v. *Arizona,* 536 U. S. ___ (2002); *Bullington* v. *Missouri,* 451 U. S. 430 (1981). Our decisions permitting resentencing after appeal of noncapital convictions thus do not address the question presented in this case.

the Court's decision, if a defendant sentenced to life after a jury deadlock chooses to appeal her underlying conviction, she faces the possibility of death if she is successful on appeal but convicted on retrial. If, on the other hand, the defendant loses her appeal, or chooses to forgo an appeal, the final judgment for life stands. In other words, 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.

We have previously declined to interpret the Double Jeopardy Clause in a manner that puts defendants in this bind. In *Green*, we rejected the argument that appealing a second-degree murder conviction prolonged jeopardy on a related first-degree murder charge. We noted that a ruling on this question in favor of the prosecutor would require defendants to "barter [their] constitutional protection against a second prosecution for an offense punishable by death as the price of a successful appeal from an erroneous conviction of another offense." *Id.*, at 193. "The law," we concluded, "should not . . . place [defendants] in such an incredible dilemma." *Ibid.* Although Sattazahn was required to barter a state-law entitlement to life against his right to appeal, rather than a constitutional protection, I nevertheless believe the considerations advanced in *Green* should inform our decision here.

Second, the punishment Sattazahn again faced on retrial was death, a penalty "unique in both its severity and its finality." *Monge* v. *California,* 524 U. S. 721, 732 (1998) (internal quotation marks omitted). These qualities heighten Sattazahn's double jeopardy interest in avoiding a second prosecution. The "hazards of [a second] trial and possible conviction," *Green*, 355 U. S., at 187, the "continuing state of anxiety and insecurity" to which retrial subjects a defendant, *ibid.*, and the "financial" as well as the "emotional burden" of a second trial, *Washington*, 434 U. S., at 503–504, are all exacerbated when the subse-

quent proceeding may terminate in death. Death, moreover, makes the "dilemma" a defendant faces when she decides whether to appeal all the more "incredible." *Green*, 355 U. S., at 193. As our elaboration in *Gregg* v. *Georgia*, 428 U. S. 153, 188 (1976), and later cases demonstrates, death is indeed a penalty "different" from all others.

For the reasons stated, I would hold that jeopardy terminated as to Sattazahn's sentence after the judge entered a final judgment for life. I would therefore reverse the judgment of the Supreme Court of Pennsylvania.