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 SCALIA announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, IV, and V, and an opinion with respect to Part III, in which THE CHIEF JUSTICE and JUSTICE THOMAS join*.

In this case, we consider once again the applicability of the Fifth Amendment's Double Jeopardy Clause in the context of capital-sentencing proceedings.

I

On Sunday evening, April 12, 1987, Petitioner David Allen Sattazahn and his accomplice, Jeffrey Hammer, hid in a wooded area waiting to rob Richard Boyer, manager of the Heidelberg Family Restaurant. Sattazahn carried a .22-caliber Ruger semiautomatic pistol and Hammer a .41-caliber revolver. They accosted Boyer in the restaurant's parking lot at closing time. With guns drawn, they demanded the bank deposit bag containing the day's receipts. Boyer threw the bag toward the roof of the restau-

*JUSTICE KENNEDY joins all but Part III of this opinion.

rant. Petitioner commanded Boyer to retrieve the bag, but instead of complying Boyer tried to run away. Both petitioner and Hammer fired shots, and Boyer fell dead. The two men then grabbed the deposit bag and fled.

The Commonwealth of Pennsylvania prosecuted petitioner and sought the death penalty. On May 10, 1991, a jury returned a conviction of first-, second-, and third-degree murder, and various other charges. In accordance with Pennsylvania law the proceeding then moved into a penalty phase. See 18 Pa. Cons. Stat. §1102(a)(1) (1998); 42 Pa. Cons. Stat. §9711(a)(1) (Supp. 2000). The Commonwealth presented evidence of one statutory aggravating circumstance: commission of the murder while in the perpetration of a felony. See §9711(d)(6). Petitioner presented as mitigating circumstances his lack of a significant history of prior criminal convictions and his age at the time of the crime. See §§9711(e)(1), (4). 563 Pa. 533, 539, 763 A. 2d 359, 362 (2000).

Pennsylvania law provides that, in the penalty phase of capital proceedings:

> "(iv) the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance . . . and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.
>
> "(v) 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." §9711(c).

After both sides presented their evidence, the jury deliberated for some 3½ hours, App. 23, after which it returned a note signed by the foreman which read: "We, the jury are

hopelessly deadlocked at 9 to 3 for life imprisonment. Each one is deeply entrenched in their *[sic]* position. We do not expect anyone to change his or her position." *Id.,* at 25. Petitioner then moved "under 9711(c), subparagraph 1, subparagraph Roman Numeral 5, that the jury be discharged and that [the court] enter a sentence of life imprisonment." *Id.,* at 22. The trial judge, in accordance with Pennsylvania law, discharged the jury as hung, and indicated that he would enter the required life sentence, *id.,* at 23–24, which he later did, *id.,* at 30–33.

Petitioner appealed to the Pennsylvania Superior Court. That court concluded that the trial judge had erred in instructing the jury in connection with various offenses with which petitioner was charged, including first-degree murder. It accordingly reversed petitioner's first-degree murder conviction and remanded for a new trial. *Commonwealth* v. *Sattazahn,* 428 Pa. Super. 413, 631 A. 2d 597 (1993).

On remand, Pennsylvania filed a notice of intent to seek the death penalty. In addition to the aggravating circumstance alleged at the first sentencing hearing, the notice also alleged a second aggravating circumstance, petitioner's significant history of felony convictions involving the use or threat of violence to the person. (This was based on guilty pleas to a murder, multiple burglaries, and a robbery entered after the first trial.) Petitioner moved to prevent Pennsylvania from seeking the death penalty and from adding the second aggravating circumstance on retrial. The trial court denied the motion, the Superior Court affirmed the denial, App. 73, and the Pennsylvania Supreme Court declined to review the ruling, *Commonwealth* v. *Sattazahn*, 547 Pa. 742, 690 A. 2d 1162 (1997). At the second trial, the jury again convicted petitioner of first-degree murder, but this time imposed a sentence of death.

On direct appeal, the Pennsylvania Supreme Court

affirmed both the verdict of guilt and the sentence of death on retrial. 563 Pa., at 551, 763 A. 2d, at 369. Relying on its earlier decision in *Commonwealth* v. *Martorano*, 535 Pa. 178, 634 A. 2d 1063 (1993), the court concluded that neither the Double Jeopardy Clause nor the Due Process Clause barred Pennsylvania from seeking the death penalty at petitioner's retrial. 563 Pa., at 544–548, 763 A. 2d, at 366–367. We granted certiorari, 535 U. S. 926 (2002).

II

A

The Double Jeopardy Clause of the Fifth Amendment commands that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." Under this Clause, once a defendant is placed in jeopardy for an offense, and jeopardy terminates with respect to that offense, the defendant may neither be tried nor punished a second time for the same offense. *North Carolina* v. *Pearce,* 395 U. S. 711, 717 (1969). Where, as here, a defendant is convicted of murder and sentenced to life imprisonment, but appeals the conviction and succeeds in having it set aside, we have held that jeopardy has not terminated, so that the life sentence imposed in connection with the initial conviction raises no double-jeopardy bar to a death sentence on retrial. *Stroud* v. *United States,* 251 U. S. 15 (1919).

In *Stroud*, the only offense at issue was that of murder, and the sentence was imposed by a judge who did not have to make any further findings in order to impose the death penalty. *Id.,* at 18. In *Bullington* v. *Missouri,* 451 U. S. 430 (1981), however, we held that the Double Jeopardy Clause does apply to capital-sentencing proceedings where such proceedings "have the hallmarks of the trial on guilt or innocence." *Id.*, at 439. We identified several aspects of Missouri's sentencing proceeding that resembled a trial, including the requirement that the prosecution prove

certain statutorily defined facts beyond a reasonable doubt to support a sentence of death. *Id.*, at 438. Such a procedure, we explained, "*explicitly requires* the jury to determine whether the prosecution has 'proved its case.'" *Id.*, at 444. Since, we concluded, a sentence of life imprisonment signifies that "'the jury has already acquitted the defendant of whatever was necessary to impose the death sentence,'" the Double Jeopardy Clause bars a State from seeking the death penalty on retrial. *Id.,* at 445 (quoting *State ex rel. Westfall* v. *Mason*, 594 S. W. 2d 908, 922 (Mo. 1980) (Bardgett, C. J., dissenting)).

We were, however, careful to emphasize that it is not the mere imposition of a life sentence that raises a double-jeopardy bar. We discussed *Stroud*, a case in which a defendant who had been convicted of first-degree murder and sentenced to life imprisonment obtained a reversal of his conviction and a new trial when the Solicitor General confessed error. In *Stroud*, the Court unanimously held that the Double Jeopardy Clause did not bar imposition of the death penalty at the new trial. 251 U. S., at 17–18. What distinguished *Bullington* from *Stroud*, we said, was the fact that in *Stroud* "there was no separate sentencing proceeding at which the prosecution was required to prove—beyond a reasonable doubt or otherwise—additional facts in order to justify the particular sentence." *Bullington*, 451 U. S., at 439. We made clear that an "acquittal" at a trial-like sentencing phase, rather than the mere imposition of a life sentence, is required to give rise to double-jeopardy protections. *Id.*, at 446.

Later decisions refined *Bullington*'s rationale. In *Arizona* v. *Rumsey*, 467 U. S. 203 (1984), the State had argued in the sentencing phase, based on evidence presented during the guilt phase, that three statutory aggravating circumstances were present. The trial court, however, found that no statutory aggravator existed, and accordingly entered judgment in the accused's favor on the issue of death. On

the State's cross-appeal, the Supreme Court of Arizona concluded that the trial court had erred in its interpretation of one of the statutory aggravating circumstances, and remanded for a new sentencing proceeding, which produced a sentence of death. *Id.*, at 205–206. In setting that sentence aside, we explained that "[t]he double jeopardy principle relevant to [Rumsey's] case is the same as that invoked in *Bullington:* an acquittal on the merits by the sole decisionmaker in the proceeding is final and bars retrial on the same charge." *Id.*, at 211.

> "The trial court entered findings denying the existence of each of the seven statutory aggravating circumstances, and as required by state law, the court then entered judgment in respondent's favor on the issue of death. That judgment, *based on findings sufficient to establish legal entitlement to the life sentence*, amounts to an acquittal on the merits and, as such, bars any retrial of the appropriateness of the death penalty." *Ibid.* (emphasis added).

Rumsey thus reaffirmed that the relevant inquiry for double-jeopardy purposes was not whether the defendant received a life sentence the first time around, but rather whether a first life sentence was an "acquittal" based on findings sufficient to establish legal entitlement to the life sentence—*i. e.,* findings that the government failed to prove one or more aggravating circumstances beyond a reasonable doubt.

A later case in the line, *Poland* v. *Arizona*, 476 U. S. 147 (1986), involved two defendants convicted of first-degree murder and sentenced to death. On appeal the Arizona Supreme Court set aside the convictions (because of jury consideration of nonrecord evidence) and further found that there was insufficient evidence to support the one aggravating circumstance found by the trial court. It concluded, however, that there *was* sufficient evidence to

support a *different* aggravating circumstance, which the trial court had thought not proved. The court remanded for retrial; the defendants were again convicted of first-degree murder, and a sentence of death was again imposed. *Id.*, at 149–150. We decided that in those circumstances, the Double Jeopardy Clause was *not* implicated. We distinguished *Bullington* and *Rumsey* on the ground that in *Poland*, unlike in those cases, neither the judge nor the jury had "acquitted" the defendant in his first capital sentencing proceeding by entering findings sufficient to establish legal entitlement to the life sentence. 476 U. S., at 155–157.

B

Normally, "a retrial following a 'hung jury' does not violate the Double Jeopardy Clause." *Richardson* v. *United States,* 468 U. S. 317, 324 (1984). Petitioner contends, however, that given the unique treatment afforded capital-sentencing proceedings under *Bullington*, double-jeopardy protections were triggered when the jury deadlocked at his first sentencing proceeding and the court prescribed a sentence of life imprisonment pursuant to Pennsylvania law.

We disagree. Under the *Bullington* line of cases just discussed, the touchstone for double-jeopardy protection in capital-sentencing proceedings is whether there has been an "acquittal." Petitioner here cannot establish that the jury or the court "acquitted" him during his first capital-sentencing proceeding. As to the jury: The verdict form returned by the foreman stated that the jury deadlocked 9-to-3 on whether to impose the death penalty; it made no findings with respect to the alleged aggravating circumstance. That result—or more appropriately, that non-result—cannot fairly be called an acquittal "based on findings sufficient to establish legal entitlement to the life sentence." *Rumsey, supra*, at 211.

The entry of a life sentence by the judge was not "acquittal," either. As the Pennsylvania Supreme Court explained:

> "'Under Pennsylvania's sentencing scheme, the judge has no discretion to fashion sentence once he finds that the jury is deadlocked. The statute directs him to enter a life sentence. 42 Pa. C. S. §9711(c)(1)(v) (. . . if . . . further deliberation will not result in a unanimous agreement as to the sentence, . . . the court *shall* sentence the defendant to life imprisonment.) (emphasis added). The judge makes no findings and resolves no factual matter. Since judgment is not based on findings which resolve some factual matter, it is not sufficient to establish legal entitlement to a life sentence. A default judgment does not trigger a double jeopardy bar to the death penalty upon retrial.'" 563 Pa., at 548, 763 A. 2d, at 367 (quoting *Martorano*, 535 Pa., at 194, 634 A. 2d, at 1070).

It could be argued, perhaps, that the statutorily required entry of a life sentence creates an "entitlement" even without an "acquittal," because that is what the Pennsylvania Legislature intended—*i.e.*, it intended that the life sentence should survive vacation of the underlying conviction. The Pennsylvania Supreme Court, however, did not find such intent in the statute—and there was eminently good cause not to do so. A State's simple interest in closure might make it willing to accept the default penalty of life imprisonment when the conviction is affirmed and the case is, except for that issue, at an end—but unwilling to do so when the case must be retried anyway. And its interest in conservation of resources might make it willing to leave the sentencing issue unresolved (and the default life sentence in place) where the cost of resolving it is the empaneling of a new jury and, in all likelihood, a repetition of much of the guilt phase of the first trial—though it

is eager to attend to that unfinished business if there is to be a new jury and a new trial anyway.

III

A

When *Bullington*, *Rumsey*, and *Poland* were decided, capital-sentencing proceedings were understood to be just that: *sentencing proceedings*. Whatever "hallmarks of [a] trial" they might have borne, *Bullington*, 451 U. S., at 439, they differed from trials in a respect crucial for purposes of the Double Jeopardy Clause: They dealt only with the *sentence* to be imposed for the "offence" of capital murder. Thus, in its search for a rationale to support *Bullington* and its "progeny," the Court continually tripped over the text of the Double Jeopardy Clause.

Recent developments, however, have illuminated this part of our jurisprudence. Our decision in *Apprendi* v. *New Jersey,* 530 U. S. 466 (2000), clarified what constitutes an "element" of an offense for purposes of the Sixth Amendment's jury-trial guarantee. Put simply, if the existence of any fact (other than a prior conviction) increases the maximum punishment that may be imposed on a defendant, that fact—no matter how the State labels it—constitutes an element, and must be found by a jury beyond a reasonable doubt. *Id.,* at 482–484, 490.

Just last Term we recognized the import of *Apprendi* in the context of capital-sentencing proceedings. In *Ring* v. *Arizona,* 536 U. S. ___ (2002), we held that aggravating circumstances that make a defendant eligible for the death penalty "operate as 'the functional equivalent of an element of a *greater offense*.'" *Id.,* at ___ (slip op., at 23) (emphasis added). That is to say, for purposes of the Sixth Amendment's jury-trial guarantee, the underlying offense of "murder" is a distinct, lesser included offense of "murder plus one or more aggravating circumstances": Whereas the former exposes a defendant to a maximum penalty of

life imprisonment, the latter increases the maximum permissible sentence to death. Accordingly, we held that the Sixth Amendment requires that a jury, and not a judge, find the existence of any aggravating circumstances, and that they be found, not by a mere preponderance of the evidence, but beyond a reasonable doubt. *Id.,* at ___–___ (slip op., at 22–23).

We can think of no principled reason to distinguish, in this context, between what constitutes an offense for purposes of the Sixth Amendment's jury-trial guarantee and what constitutes an "offence" for purposes of the Fifth Amendment's Double Jeopardy Clause. Cf. *Monge* v. *California,* 524 U. S. 721, 738 (1998) (SCALIA, J., dissenting) ("The fundamental distinction between facts that are *elements* of a criminal offense and facts that go only to the *sentence*" not only "delimits the boundaries of . . . important constitutional rights, like the Sixth Amendment right to trial by jury," but also "provides the foundation for our entire double jeopardy jurisprudence"). In the post-*Ring* world, the Double Jeopardy Clause can, and must, apply to some capital-sentencing proceedings consistent with the text of the Fifth Amendment. If a jury unanimously concludes that a State has failed to meet its burden of proving the existence of one or more aggravating circumstances, double-jeopardy protections attach to that "acquittal" on the offense of "murder plus aggravating circumstance(s)." Thus, *Rumsey* was correct to focus on whether a factfinder had made findings that constituted an "acquittal" of the aggravating circumstances; but the reason that issue was central is not that a capital-sentencing proceeding is "comparable to a trial," 467 U. S., at 209 (citing *Bullington, supra*, at 438), but rather that "murder plus one or more aggravating circumstances" is a separate offense from "murder" *simpliciter*.

B

For purposes of the Double Jeopardy Clause, then, "first-degree murder" under Pennsylvania law—the offense of which petitioner was convicted during the guilt phase of his proceedings—is properly understood to be a lesser included offense of "first-degree murder plus aggravating circumstance(s)." See *Ring*, *supra*, at ___–___ (slip op., at 22–23). Thus, if petitioner's first sentencing jury had unanimously concluded that Pennsylvania failed to prove any aggravating circumstances, that conclusion would operate as an "acquittal" of the greater offense—which would bar Pennsylvania from retrying petitioner on that greater offense (and thus, from seeking the death penalty) on retrial. Cf. *Rumsey, supra*, at 211.

But that is not what happened. Petitioner was convicted in the guilt phase of his first trial of the lesser offense of first-degree murder. During the sentencing phase, the jury deliberated without reaching a decision on death or life, and without making any findings regarding aggravating or mitigating circumstances. After 3½ hours the judge dismissed the jury as hung and entered a life sentence in accordance with Pennsylvania law. As explained, *supra*, at 7–8, neither judge nor jury "acquitted" petitioner of the greater offense of "first-degree murder plus aggravating circumstance(s)." Thus, when petitioner appealed and succeeded in invalidating his conviction of the lesser offense, there was no double-jeopardy bar to Pennsylvania's retrying petitioner on both the lesser and the greater offense; his "jeopardy" never terminated with respect to either. Cf. *Green* v. *United States,* 355 U. S. 184, 189 (1957) (citing *United States* v. *Ball,* 163 U. S. 662 (1896)); *Selvester* v. *United States,* 170 U. S. 262, 269 (1898).

IV

The dissent reads the Court's decision in *United States* v. *Scott,* 437 U. S. 82 (1978), as supporting the proposition

that where, as here, a defendant's "case was fully tried and the court, on its own motion, entered a final judgment—a life sentence—terminating the trial proceedings," *post*, at 9, the Double Jeopardy Clause bars retrial. There are several problems with this reasoning.

First, it is an understatement to say that "*Scott* . . . did not home in on a case like [petitioner's]," *post*, at 6 (GINSBURG, J., dissenting). The statement upon which the dissent relies—that double jeopardy "may"attach when the "trial judge terminates the proceedings favorably to the defendant on a basis not related to factual guilt or innocence," 437 U. S., at 92, at least where the defendant "had either been found not guilty *or* . . . *had at least insisted on having the issue of guilt submitted to the first trier of fact*," *id.*, at 96 (emphasis added)—was nothing more than dictum, and a tentative one ("may") at that. It would be a thin reed on which to rest a hitherto unknown constitutional prohibition of the entirely rational course of making a hung jury's failure to convict provisionally final, subject to change if the case must be retried anyway.

Second, the dictum in *Scott* does not even embrace the present case. The petitioner here did not "insist" upon a merits determination, but to the contrary asked that the jury be dismissed as hung. As the dissent recognizes, when the jury announced that it was deadlocked, petitioner "move[d] 'that the jury be discharged' and that a life sentence be entered under [42 Pa. Cons. Stat.] §9711(c)(1)(v)." *Post*, at 9, n. 5. It is no response to say that "[t]he judge did not grant [the] motion," but instead made a legal determination whether petitioner was entitled to the judgment he sought. *Ibid*. Surely double-jeopardy protections cannot hinge on whether a trial court characterizes its action as self-initiated or in response to motion. Cf. *Scott*, *supra*, at 96. What actually happened in this case is the same as what happened in *Scott*, where we *denied* double-jeopardy protection: (1) the defendant

moved for entry of a judgment in his favor on procedural grounds (there, delay in indictment; here, a hung jury); (2) the judge measured facts (there, the length of delay; here, the likelihood of the jury's producing a verdict) against a legal standard to determine whether such relief was appropriate; and (3) concluding that it was, granted the relief.

Nor, in these circumstances, does the prospect of a second capital-sentencing proceeding implicate any of the "perils against which the Double Jeopardy Clause seeks to protect." *Post*, at 7 (GINSBURG, J., dissenting). The dissent stresses that a defendant in such circumstances is "subject to the 'ordeal' of a second full-blown life or death trial," which "'compel[s] [him] to live in a continuing state of anxiety and insecurity.'" *Ibid.* (quoting *Green* v. *United States, supra,* at 187); see also *post,* at 11. But as even the dissent must admit, *post,* at 8, we have not found this concern determinative of double jeopardy in all circumstances. And it should not be so here. This case hardly presents the specter 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." *Scott*, *supra*, at 96. Instead, we see here a state which, for any number of perfectly understandable reasons, *supra*, at 8–9, has quite reasonably agreed to accept the default penalty of life imprisonment when the conviction is affirmed and the case is, except for that issue, at an end—but to pursue its not-yet-vindicated interest in "'one complete opportunity to convict those who have violated its laws'" where the case must be retried anyway, *post*, at 7 (quoting *Arizona* v. *Washington,* 434 U. S. 497, 509 (1978)).

V

In addition to his double-jeopardy claim, petitioner raises a freestanding claim alleging deprivation of due

process in violation of the Fourteenth Amendment. He contends that, regardless of whether the imposition of the death sentence at the second trial violated the Double Jeopardy Clause, it unfairly deprived him of his "life" and "liberty" interests in the life sentence resulting from his first sentencing proceeding. He frames the argument in these terms:

> "Pennsylvania created a constitutionally protected life and liberty interest in the finality of the life judgment statutorily mandated as a result of a [deadlocked] jury. That right vested when the court found the jury deadlocked and imposed a mandatory life sentence. Subjecting [p]etitioner to a capital resentencing once that right has vested violated [D]ue [P]rocess." Reply Brief for Petitioner 18–19.

We think not. Section 1 of the Fourteenth Amendment commands that "[n]o State shall . . . deprive any person of life, liberty, or property, *without due process of law* . . . ." (emphasis added). Nothing indicates that any "life" or "liberty" interest that Pennsylvania law may have given petitioner in the life sentence imposed after his first capital sentencing proceeding was somehow immutable. And he was "deprived" of any such interest only by operation of the "process" he invoked to invalidate the underlying first-degree murder conviction on which it was based.

At bottom, petitioner's due-process claim is nothing more than his double-jeopardy claim in different clothing. As we have said:

> "The Bill of Rights speaks in explicit terms to many aspects of criminal procedure, and the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order." *Medina* v. *California,* 505

U. S. 437, 443 (1992).

We decline petitioner's invitation to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause.

* * *

The Pennsylvania Supreme Court correctly concluded that neither the Fifth Amendment's Double Jeopardy Clause nor the Fourteenth Amendment's Due Process Clause barred Pennsylvania from seeking the death penalty against petitioner on retrial. The judgment of that court is, therefore,

Affirmed.