Blueford v. Arkansas

Argued: February 22, 2012

Decided: May 24, 2012

Background

The Fifth Amendment of the Constitution says, in part, that no person shall be “subject for the same offense to be twice put in jeopardy of life or limb.” This is known as the Double Jeopardy Clause. It was written with three goals in mind. First, it prohibits the government from imposing multiple punishments for the same crime. Second, it prohibits the government from pursuing additional prosecution for the same crime after a conviction. Third, it prohibits the government from pursuing additional prosecution for the same crime after an acquittal.

What does it mean to be acquitted of a crime? At the conclusion of a criminal trial, the jury (or sometimes a judge) is asked to deliver a verdict. If they do not believe that the evidence against the defendant is sufficient, beyond a reasonable doubt, to convict him or her of that crime, they can acquit the defendant. An acquittal is final and cannot be appealed by the government.

This means that once a person is acquitted, he or she cannot be tried again for that crime. Imagine that a person commits a burglary and is acquitted after a trial. After the trial, the prosecutor finds a video of the person committing the burglary. The prosecutor is *not allowed* to then try the person again for the same act of burglary because that would be a violation of the Double Jeopardy Clause.

The underlying idea behind the Double Jeopardy Clause is that a trial for any one offense should be final and conclusive, so that the person tried should not have fear and anxiety that the government might prosecute them again.

Facts

Alex Blueford was charged with the capital murder of his girlfriend’s son. In addition to capital murder, he was charged with the “lesser included offenses” of first degree murder, manslaughter, and negligent homicide.

A lesser included offense is a crime that involves almost all of the components of another, more serious crime. For example, someone who commits a robbery (which is defined as taking property from someone else by force or intimidation) has also committed a larceny, which is a robbery without the use of force or intimidation. Suspected criminals are often charged with lesser included offenses to give the jury the option, if they do not believe that the additional elements required to prove a greater crime are present, to convict the suspect of a lesser crime. No matter what, though, the jury is only allowed to convict on one of the charges based on the same crime. You can’t, for example, convict someone of both larceny and robbery for the same incident, because that would be a violation of the Double Jeopardy Clause’s prohibition on multiple punishments.

Blueford’s jury was instructed to consider the capital murder charge and the lesser included offenses one at a time. If all twelve had reasonable doubt that Blueford was guilty of the greatest charge (capital murder), they could then consider the next lesser charge, and so on. If, after arriving at the least of the lesser included charges, they unanimously had reasonable doubt that Blueford was guilty of that charge (negligent homicide), they could vote to acquit Blueford of all four charges.

During deliberation the jury sent out two notes to the judge indicating that they were having difficulty coming to a verdict. The judge asked the forewoman to report on the status of the deliberations and she said that the jury had voted unanimously against both capital murder and first-degree murder but that they were stuck 9-3 on manslaughter and had not yet considered negligent homicide. After another half hour, the jury reported that it was still having difficulty. The judge declared a mistrial, invalidating the proceedings up to that point. Since the trial was declared invalid, the entire process had to start over again with a new jury.

At the retrial, the prosecutor charged Blueford again with capital murder and the three lesser-included offenses. Blueford argued that he could only be tried for manslaughter and negligent homicide because the jury had acquitted him on the first two charges. The prosecutor said that there had been no official acquittal because the jury never delivered a final verdict. Both the Arkansas Circuit Court and the Arkansas Supreme Court agreed with the prosecutor. Blueford appealed this decision and the Supreme Court agreed to hear the case.

Issue

Does the Double Jeopardy Clause of the Fifth Amendment forbid re-prosecution of a greater offense after a jury announces that it has voted against guilt on the greater offense and has deadlocked on a lesser offense?

Constitutional Amendments and Precedents

* **Fifth Amendment**

“…nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...”

* **Green v. U.S. (1957)**

Everett Green was charged with arson and first degree murder. He was convicted of arson and murder in the second degree. He appealed his conviction for second degree murder and the appeals court threw out the conviction and ordered a new trial. He was tried again for first degree murder. He argued that he could only be tried again for second degree murder because he had already been functionally acquitted on first degree murder. The Supreme Court agreed, saying that he did not have to go through the difficult trial process again on first degree murder after a jury had expressly refused to convict him.

* **Yeager v. U.S. (2009)**

Scott Yeager was a Senior Vice President for a company that went bankrupt. He was accused of fraud, insider trading, and money laundering. After a trial, the jury acquitted Yeager of fraud but was unable to reach a verdict on the other charges. The government re-charged him on the insider trading and money laundering counts, but Yeager claimed this new prosecution was forbidden because it amounted to double jeopardy. The Supreme Court said that it was alright to prosecute on the remaining charges because the important thing for double jeopardy purposes is what the jury decides. The inability to reach a verdict is a non-event that does not preclude additional prosecution.

Arguments for Blueford

* The jury’s acquittals on the capital murder and first-degree murder charges were clear and unequivocal. When asked by the judge, the forewoman said that the jury was unanimously against both capital murder and first degree murder.
* The jury was instructed specifically not to proceed to deliberating a lesser charge until they had decided unanimously against the greater charge. They would not think that they had the ability to go back and reconsider their decisions and so their announced decision was final.
* The purpose of double jeopardy is to make sure a person does not have to be subjected to another arduous trial after a jury of his or her peers has decided to acquit. The jury in this case had clearly decided to acquit Blueford of the two greatest charges. Allowing Blueford to be re-prosecuted for these charges represents a violation of everything for which the Double Jeopardy Clause stands. All that matters is the intent of the jury, not how the jury expressed that intent.
* The judge could have asked the jury to repeat their votes on each charge before declaring a mistrial. Requiring a partial verdict when one is clearly available does nothing to subvert the interests of the state and ensures greater fairness and adherence to the spirit of the law.

Arguments for Arkansas

* The forewoman’s report on the status of deliberations was not an acquittal on the two greater charges. A status report represents only a tentative decision and is not official. They neither returned a completed verdict form nor declared in court that they had reached a final verdict. Since it was not an official report there is no way to confirm whether the forewoman’s statements accurately reflected each juror’s vote.
* After being sent back for additional deliberations the jury may have gone back to consider the capital murder charge. There was nothing in the instructions to prevent them from doing this and we cannot assume that they did not. The final message from the jury to the judge did not indicate on which charge they were stuck at the time.
* The verdict forms given to the jury allowed them to either convict on one of the four counts or to acquit. There was no indication that they were allowed to acquit on some counts and not decide on the others and so when they told the judge their current voting status they would not have thought that they were acquitting Blueford of those charges.
* Judges are allowed to order mistrials due to juries who are unable to decide. The judge has no obligation to change the defined rules of the trial and issue new jury instructions midstream to allow for a partial acquittal.

Decision

The Court ruled for the state of Arkansas, deciding that retrying Blueford on all the charges was not a violation of the Double Jeopardy clause. Chief Justice Roberts wrote for the majority, saying that acquittals need to be official and final in order to preserve the integrity of the criminal justice system. He was joined in this opinion by Justices Kennedy, Thomas, Alito, Scalia, and Breyer. Justice Sotomayor wrote a dissent, arguing that the jury acquitted Blueford of the two greater charges regardless of the form that acquittal took. She was joined by Justices Kagan and Ginsburg.

Majority

The majority opinion said that the jury report was in no way a final decision or resolution on anything. There were an additional 30 minutes of deliberation after that status report, which the majority said deprives the report of the finality necessary to constitute a proper acquittal. In addition, the majority said that there was nothing in the jury instructions that would have prevented them from going back to a charge and re-considering it. It is possible that the jurors voted against the capital murder and first degree murder charges to determine the extent of their agreement before actual deliberations began. If this was the case, they said, a juror might then reflect on the evidence during the actual deliberations and decide that his or her previous vote was incorrect. All that it would take is one juror to change his or her mind at any point in the deliberations in order for the entire jury to have to reconsider the greater offenses. This ambiguity, argued the Justices, makes it clear that there was no official and final acquittal given during the status report.

Dissent

The dissent focused on the substance over the form of the acquittal, saying it should not matter that there was no official verdict because it was clear that the jury meant to acquit on the greater two charges. The dissenting Justices said that the jury instructions, indicating that the jury must unanimously have reasonable doubt before moving on to consider the next offense, means that the jury had to functionally acquit Blueford on the capital and first degree murder before moving on to manslaughter. There is nothing in the record, they said, that would indicate in any way that they reconsidered their decisions when they returned for additional deliberation after the jury survey. In fact, a reasonable person would read the jury instructions as forbidding such an act.

The judge erred, according to the dissenting Justices, by not taking a partial verdict. The Court has alwayssaid that there must be a manifest necessity in order for a judge to announce a mistrial. This means that if there is a clear path to at least partially resolve the case, the judge should take that path.