Capital Defense Journal

Volume 15 | Issue 2 Article 6

Spring 3-1-2003

Sattazahn v. Pennsylvania 123 S. Ct. 732 (2003)

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/wlucdj

 Part of the Law Enforcement and Corrections Commons

Recommended Citation

Sattazahn v. Pennsylvania 123 S. Ct. 732 (2003), 15 Cap. DEF J. 419 (2003).
Available at: https://scholarlycommons.law.wlu.edu/wlucdj/vol15/iss2/6

This Casenote, U.S. Supreme Ct. is brought to you for free and open access by the Law School Journals at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Capital Defense Journal by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Sattazahn v. Pennsylvania
123 S. Ct. 732 (2003)

I. Facts

On April 12, 1987, David Allen Sattazahn ("Sattazahn") and his accomplice hid in a wooded area with a pistol and a revolver, respectively, waiting to rob the manager of Heidelberg Family Restaurant, Richard Boyer ("Boyer"). When Boyer exited, Sattazahn and his accomplice accosted him and, with guns drawn, demanded the bank deposit bag. Boyer threw the bag toward the restaurant and ran away. Sattazahn and his accomplice fired shots and killed Boyer. The men grabbed the bag and fled.[1]

The Commonwealth of Pennsylvania prosecuted Sattazahn and sought a sentence of death. On May 10, 1991, a jury convicted Sattazahn of first-, second-, and third-degree murder along with other charges. The proceeding then moved to the penalty phase. The Commonwealth presented evidence of one statutory aggravating factor: commission of the murder during the perpetration of a felony. Sattazahn presented two mitigating factors: his lack of a significant history of criminal convictions and his age at the time of the crime.[2]

In Pennsylvania, the law provides that in the penalty phase of capital proceedings " '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' "; in all other cases, a sentence of life is required.[3] Title 42, Section 9711 of the Pennsylvania Code also provides that the court may discharge the jury if the verdict reached was not unanimous, in which case the court must enter a sentence of life imprisonment.[4]

---

1. Sattazahn v. Pennsylvania, 123 S. Ct. 732, 735 (2003).

2. *Id.* at 735; *see also* 42 PA. CONS. STAT. ANN. § 9711(a)(1) (West Supp. 2002) (stating that "[a]fter a verdict of murder of the first degree is recorded and before the jury is discharged, the court shall conduct a separate sentencing hearing in which the jury shall determine whether the defendant shall be sentenced to death or life imprisonment"); 42 PA. CONS. STAT. ANN. § 9711(d)(6) (West Supp. 2002) (defining "a killing while in the perpetration of a felony" as an aggravating factor); 42 PA. CONS. STAT. ANN. § 9711(e)(1) (West Supp. 2002) (stating that defendant's lack of a criminal history is a mitigating factor); 42 PA. CONS. STAT. ANN. § 9711(e)(4) (West Supp. 2002) (stating that the age of the defendant at the time of the crime is a mitigating factor); 42 PA. CONS. STAT. ANN. § 9711(a)-(c) (West Supp. 2002) (providing sentencing procedures for first degree murder and describing instructions to jury).

3. *Sattazahn*, 123 S. Ct. at 736 (quoting 42 PA. CONS. STAT. ANN. § 9711(c)(1)(iv) (West Supp. 2000)).

4. *Id.* (citing 42 PA. CONS. STAT. ANN. § 9711(c)(1)(v) (West Supp. 2000)).

The jury deliberated for three-and-one-half hours and stated that it was deadlocked at nine to three for life imprisonment.[5] Sattazahn moved the court to discharge the jury and enter a sentence of life imprisonment.[6] The trial court discharged the jury and entered a sentence of life.[7] Sattazahn appealed his conviction to the Superior Court of Pennsylvania on the ground that the trial judge erroneously instructed the jury that finding beyond a reasonable doubt that Sattazahn was armed with a firearm he was not licensed to carry was evidence of his intention to commit crimes of violence.[8] Concluding that the instructions presented to the jury "relieve[d] the Commonwealth from its burden of proving by evidence that [Sattazahn] acted with intent to commit the crimes of murder, robbery, and aggravated assault," the court reversed the conviction and ordered a new trial.[9] On remand, the Commonwealth filed a notice of intent to seek the death penalty and alleged another aggravating factor in addition to the factor presented at the first trial.[10] Sattazahn moved to prevent the Commonwealth from seeking the death penalty and from presenting the second aggravating factor.[11] The trial court denied the motion, the Superior Court affirmed the decision, and the Supreme Court of Pennsylvania declined to review the ruling.[12] At the second trial, the jury convicted Sattazahn of first-degree murder and imposed a sentence of death.[13]

The Supreme Court of Pennsylvania affirmed the verdict and the sentence of death on direct appeal. The court concluded that neither the Double Jeopardy Clause of the Fifth Amendment nor the Due Process Clause of the Fourteenth Amendment barred the Commonwealth from seeking the death penalty at Sattazahn's second trial. The United States Supreme Court granted certiorari.[14]

II. Holding

Justice Scalia's plurality opinion with Justice O'Connor's concurrence decided that double jeopardy did not bar the Commonwealth from seeking the

---

5. *Id.*

6. *Id.*; *see* § 9711(c)(1)(v) (stating 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" and that the court shall sentence the defendant to life).

7. *Sattazahn*, 123 S. Ct. at 736; *see* § 9711(c)(1)(v).

8. Commonwealth v. Sattazahn, 631 A.2d 597, 604 (Pa. Super. Ct. 1993) (per curiam).

9. *Id.* at 606 (concluding that a jury instruction, stating that finding the defendant carried a firearm without a license was evidence of an intent to commit crimes, was improper and that such error was not harmless).

10. *Sattazahn*, 123 S. Ct. at 736. The Commonwealth alleged a second aggravating factor—Sattazahn's "significant history of felony convictions involving the use or threat of violence to the person." *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*; *see* Sattazahn v. Pennsylvania, 535 U.S. 926 (2002) (mem.).

death penalty at the second trial.[15] The Court determined that the jury in Sattazahn's first trial did not acquit him based on findings sufficient to establish legal entitlement to a life sentence because the jury deadlocked and did not make findings on the aggravating or mitigating factors.[16] Rather, double jeopardy will apply to capital-sentencing proceedings only if a jury unanimously determined that a State has failed to prove the existence of one or more aggravating factors.[17]

III. Analysis

A. Applying Double Jeopardy to Capital-Sentencing Proceedings

The Double Jeopardy Clause of the Fifth Amendment states that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb."[18] In *Stroud v. United States*,[19] the Court held that if a defendant is convicted of murder and sentenced to life imprisonment in a unitary proceeding, but successfully appeals that conviction, a death sentence on retrial is not barred.[20] In *Bullington v. Missouri*,[21] the Court held that double jeopardy applies to capital-sentencing proceedings where such proceedings "have the hallmarks of the trial on guilt or innocence."[22] The distinguishing feature between *Bullington* and *Stroud* is "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.' "[23]

In *Bullington*, the trial in state court resulted in a verdict of guilty of capital murder and the penalty hearing resulted in a sentence of life imprisonment without eligibility for probation or parole for fifty years.[24] The Court stated that the requirement that the prosecution prove "certain statutorily defined facts beyond a reasonable doubt" in the penalty phase made that phase resemble a trial.[25] This procedure "*explicitly requires* the jury to determine whether the prosecution has 'proved its case.' "[26] *Bullington* was thought to hold that if the jury

15. *Sattazahn*, 123 S. Ct. at 740 (plurality opinion); *id.* at 743 (O'Connor, J., concurring).

16. *Id.* at 740 (plurality opinion); *id.* at 743 (O'Connor, J., concurring).

17. *Id.* at 740 (plurality opinion).

18. U.S. CONST. amend. V.

19. 251 U.S. 15 (1919).

20. Stroud v. United States, 251 U.S. 15, 18 (1919) (holding that jeopardy has not terminated when a defendant is convicted of murder and sentenced to life imprisonment, but successfully appeals the conviction). In *Stroud*, the offense at issue was murder and the sentence that was imposed by a judge occurred without a separate finding to impose a sentence of death. *Sattazahn*, 123 S. Ct. at 737 (citing *Stroud*, 251 U.S. at 18).

21. 451 U.S. 430 (1981).

22. Bullington v. Missouri, 451 U.S. 430, 439 (1981).

23. *Sattazahn*, 123 S. Ct. at 737 (quoting *Bullington*, 451 U.S. at 439).

24. *Bullington*, 451 U.S. at 435-36.

25. *Sattazahn*, 123 S. Ct. at 737 (citing *Bullington*, 451 U.S. at 444).

26. *Bullington*, 451 U.S. at 444.

acquitted the defendant of death by sentencing him to life imprisonment, then the Double Jeopardy Clause barred a State from seeking death on retrial.[27] Later, in *Arizona v. Rumsey*,[28] the Court explained the principle of *Bullington* further by requiring that the judgment of an acquittal be "*based on findings sufficient to establish legal entitlement to the life sentence.*"[29]

Sattazahn argued that because the jury was deadlocked, double jeopardy should bar Pennsylvania from seeking death at retrial.[30] The Court disagreed: "[T]he touchstone for double-jeopardy protection . . . is whether there has been an 'acquittal.' "[31] In *Sattazahn*, the jury made no findings in relation to the alleged aggravating factor and, therefore, that "non-result" could not be an acquittal "based on findings sufficient to establish legal entitlement to the life sentence."[32] Moreover, because the sentence was "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."[33]

*B. Application in a "Post-*Ring *World"*

Bullington was decided prior to *Ring v. Arizona*[34] when trials only dealt with the imposition of a sentence for the "offence" of capital murder.[35] In 2002, the Court decided in *Ring* that aggravating factors that make a defendant eligible for death "operate as 'the functional equivalent of an element of a *greater offense.*' "[36] Thus, "the underlying offense of 'murder' is a distinct, lesser included offense of 'murder plus one or more aggravating circumstances.' "[37] The former offense exposes a defendant to a maximum punishment of life imprisonment and the latter offense exposes a defendant to a maximum punishment of death.[38] Moreover, the *Ring* Court held that the Sixth Amendment requires a jury to find the existence of aggravating factors beyond a reasonable doubt.[39]

---

27. *Sattazahn*, 123 S. Ct. at 737 (quoting *Bullington*, 451 U.S. at 445).

28. 467 U.S. 203 (1984).

29. Arizona v. Rumsey, 467 U.S. 203, 211 (1984) (emphasis added) (stating that "[t]he double jeopardy principle relevant to [Rumsey's] case is the same as that invoked in *Bullington*").

30. *Sattazahn*, 123 S. Ct. at 738.

31. *Id.*

32. *Id.* (citing *Rumsey*, 467 U.S. at 211).

33. *Id.* at 738-39 (citing Commonwealth v. Sattazahn, 763 A.2d 359, 367 (Pa. 2000)).

34. 122 S. Ct. 2428 (2002).

35. *Sattazahn*, 123 S. Ct. at 739; *see* Ring v. Arizona, 122 S. Ct. 2428, 2443 (2002) (clarifying that "[b]ecause Arizona's enumerated aggravating factors operate as the functional equivalent of an element of a greater offense, the Sixth Amendment requires that they be found by a jury") (internal quotations and citations omitted).

36. *Sattazahn*, 123 S. Ct. at 739 (quoting *Ring*, 122 S. Ct. at 2443).

37. *Id.* (quoting *Ring*, 122 S. Ct at 2443).

38. *Id.*

39. *Id.* at 740 (citing *Ring*, 122 S. Ct. at 2442-43 (clarifying that "[b]ecause Arizona's enumer-

Justice Scalia, writing for a plurality of the Court in *Sattazahn*, stated that in a "post-*Ring* world," double jeopardy "can, and must, apply to some capital-sentencing proceedings consistent with the text of the Fifth Amendment."[40] When a jury unanimously concludes that a State did not prove the existence of one or more aggravating factors, "double-jeopardy protections attach to that 'acquittal' on the offense of 'murder plus aggravating circumstance(s).' "[41] Thus, the central issue is not whether a capital-sentencing proceeding is "comparable to a trial," but "that 'murder plus one or more aggravating circumstances' is a separate offense from 'murder.' "[42]

For double jeopardy purposes, under Pennsylvania law, "first-degree murder" is a lesser-included offense of "first-degree murder plus aggravating circumstance(s)."[43] In *Sattazahn*, the jury deliberated without making a decision on death or life, and did not determine the existence of any aggravating or mitigating factors.[44] Because neither the jury nor the judge "acquitted" Sattazahn of death, the Commonwealth was not barred by double jeopardy from seeking death on retrial.[45]

Sattazahn also alleged a due process claim in violation of the Fourteenth Amendment.[46] He argued that the second trial deprived him of his "life" and "liberty" interests in the life sentence from the first trial because "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."[47] The Court disagreed and stated that absent from Pennsylvania law is any indication that "life" or "liberty" interests given in the life sentence after Sattazahn's first trial were "immutable."[48] The Court further held that Sattazahn denied himself any such interest by appealing the first conviction of murder.[49]

---

ated aggravating factors operate as 'the functional equivalent of an element of a greater offense,' the Sixth Amendment requires that they be found by a jury") (citation omitted)); *see* U.S. CONST. amend. VI (explaining procedural rights in criminal jury trials). The *Sattazahn* Court decided that there is no reason why it should distinguish between an offense for the Sixth Amendment's jury-trial guarantee and the Fifth Amendment's Double Jeopardy Clause. *Sattazahn*, 123 S. Ct. at 739.

40. *Sattazahn*, 123 S. Ct. at 740.

41. *Id.*

42. *Id.*

43. *Id.* (citing *Ring*, 122 S. Ct. at 2442-43).

44. *Id.*

45. *Id.*

46. *Sattazahn*, 123 S. Ct. at 741; *see* U.S. CONST. amend. XIV, § 1 (stating that "nor shall any State deprive any person of life, liberty, or property, without due process of law").

47. *Sattazahn*, 123 S. Ct. at 741-42 (alteration in original); *see* U.S. CONST. amend. XIV, § 1.

48. *Sattazahn*, 123 S. Ct. at 742.

49. *Id.*

IV. Application in Virginia

Substantively, Title 42, Section 9711 of the Pennsylvania Code is virtually identical to Virginia Code Section 19.2-264.4(E). Section 19.2-264.4(E) states that "[i]n the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life."[50] Therefore, *Sattazahn* is applicable directly to Virginia cases in which a life sentence was imposed under Section 19.2-264.4(E). In those cases, the Commonwealth is not barred from pursuing a death sentence after a successful appeal of the underlying conviction.[51] Appeals should be avoided in those cases.

Justice Scalia, writing for three members of the Court,[52] stated that death is barred on retrial only if the jury makes a determination on the existence of aggravating factors beyond a reasonable doubt as well as a determination on the issue of death.[53] Justice Scalia thus distinguishes between an acquittal on aggravating factors and an "acquittal" of death. *Sattazahn*, therefore, may have an impact far beyond its holding. Sentencing phase jury instructions and verdict forms, at most, disclose whether the jury unanimously found an aggravating factor beyond a reasonable doubt. The instructions and verdict forms do not reveal whether the jury was unanimous in rejecting an aggravating factor.

Assume a case in which the jury (as disclosed by the verdict form) was unanimous in finding an aggravating factor beyond a reasonable doubt, but imposed a life sentence. The jury clearly did not "acquit" the defendant of the aggravating factor. If the defendant successfully appeals the conviction, Justice Scalia would apparently permit him to be retried and sentenced to death.

Assume a case in which the jury failed to find an aggravating factor unanimously and beyond a reasonable doubt and returned a life verdict. The verdict form will not reveal whether the jury was unanimous in rejecting the aggravating factor or whether it was split on that question. If the jury was split—it was a hung jury on the existence of the aggravator—it did not "acquit" the defendant of the aggravator. Because the verdict form will not reveal whether the jury unanimously rejected the aggravator (an "acquittal") or whether it was split on the existence of the aggravator (a "hung jury"), the defendant will not be able to establish his "acquittal" of the aggravating factor and, therefore, cannot establish his "legal entitlement to a life sentence."[54] In each of these two cases, at least three members of the Court would find that the defendant, if he successfully

---

50. VA. CODE ANN. § 19.2-264.4(E) (Michie 2000) (providing sentencing procedures).

51. *See Sattazahn*, 123 S. Ct. at 742. A majority of the Supreme Court so held. *Id.* (plurality opinion); *id.* at 743 (O'Connor, J., concurring).

52. The material from this portion of the text is from Part III of the Scalia opinion. Justice Kennedy and Justice O'Connor did not join Part III. Thus, Justice Scalia is writing for only three members of the Court, Chief Justice Rehnquist, Justice Thomas and himself. *Id.* at 735.

53. *Id.* at 740.

54. *See id.*, at 737-38 (citing *Rumsey*, 467 U.S. at 211) (establishing standards for legal entitlement to a life sentence).

appeals his conviction, can be retried for death. Counsel representing defendants whose juries returned life verdicts must carefully consider whether to advise their clients to risk an appeal of the conviction.

V. Conclusion

Sattazahn clearly permits retrial for death after a successful appeal of a case in which a life sentence was judicially imposed after the jury could not agree on a penalty. At least three members of the Court would permit retrial for death after a successful appeal of a case in which the jury returned a life verdict. The retrial for death would be permitted unless the verdict forms establish that the jury, by unanimously rejecting all charged aggravators, "acquitted" the defendant of those aggravators and thereby created a "legal entitlement to a life sentence."[55] Defense counsel considering an appeal after a life verdict can no longer rely on *Bullington* as authority for an "acquittal of death."

Priya Nath

55. *Id.* (citing *Rumsey*, 467 U.S. at 211).