

A defendant was tried on a charge of first-degree premeditated murder. At the end of trial, the court granted the defendant's request to have the jury also instructed on the lesser included offense of second-degree murder. After being instructed on the elements of both first- and second-degree murder, the jury found the defendant guilty of second-degree murder.

The defendant appealed. The appellate court reversed the conviction based on an erroneous evidentiary ruling.

May the defendant properly be retried on the original charge of first-degree murder?

- A. No, because the jury effectively acquitted the defendant of first-degree murder.
- B. No, because the vindictive-prosecution doctrine precludes punishing the defendant for taking the appeal.
- C. Yes, because the defendant was the one who sought a lesser included offense instruction.
- D. Yes, because the jury never returned a verdict on the first-degree murder charge.

Correct

Collecting Statistics

02 minsTime Spent

2023Version

Explanation:

No double jeopardy protections

(retrial permitted for same offense)

No attachment

Jury was not impaneled & sworn *or*
Judge did not begin to hear evidence

Mistrial

Requested by defendant *or*
Based on manifest necessity

Appeal

Appellate court discovered trial error & remanded case

New facts

Facts necessary for greater offense did not exist at first trial

Guilty plea to lesser offense Greater offense was charged at time of plea to lesser offense

The Fifth Amendment **double jeopardy** clause generally prohibits a second prosecution after a prior conviction for the **same offense**. Offenses are considered the same for double jeopardy purposes if one is a lesser included offense of the other because every element of the lesser offense is included in the greater offense. However, a **retrial is permitted** when a defendant's **conviction was overturned on appeal** *unless* either of the following circumstances applies:

A defendant may not be retried if the **conviction was reversed** based on **insufficiency of the evidence**.

A defendant may not be retried on a **greater offense** when he/she was **convicted only of a lesser offense** because the conviction acts as an implied acquittal of the greater offense.

Here, the jury convicted the defendant of the lesser included offense of second-degree murder but not the greater offense of first-degree murder. The appellate court then reversed the conviction based on an erroneous evidentiary ruling. However, the jury had effectively acquitted the defendant of first-degree murder by finding the defendant guilty only of the lesser offense. As a result, the double jeopardy clause prohibits the defendant from being retried on the original charge of first-degree murder.*

*The defendant may still be retried for second-degree murder since the jury found the defendant guilty of this charge.

(Choice B) The vindictive-prosecution doctrine bars a prosecutor from punishing a defendant for exercising a right—eg, appealing a criminal conviction. However, this doctrine does not prevent the prosecutor from retrying the defendant for the crime for which the defendant was originally convicted.

(Choice C) The fact that the defendant sought the instruction on the lesser included offense is irrelevant because the jury impliedly acquitted the defendant of the greater offense.

(Choice D) Although the jury never returned a verdict on the first-degree murder charge, the jury impliedly acquitted the defendant of this charge by finding the defendant guilty of second-degree murder.

Educational objective:

The double jeopardy clause generally permits a retrial of a defendant whose conviction was reversed on appeal. However, a retrial is barred if the reversal was based on insufficiency of the evidence, and a defendant convicted only of a lesser included offense may not be retried on the greater offense.

References

Price v. Georgia, 398 U.S. 323, 329–30 (1970) (explaining that the double jeopardy clause prohibits the retrial of a defendant for a greater offense when he/she was convicted only of a lesser offense because the conviction acts as an implied acquittal of the greater offense).

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