

Justices rule Pierce prosecutors OK refiling charges in double-jeopardy case

By Adam Lynn
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The Washington State Supreme Court has upheld Pierce County prosecutors' right to refile charges against a man whose convictions were overturned in a case that led to restrictions on prosecutors' use of PowerPoint presentations during closing arguments.

In a 6-3 decision released Thursday, the high court ruled that Edward Michael Glasmann's constitutional protections against double jeopardy were not violated when prosecutors refiled the original charges against him after his successful appeal.

Glasmann had argued he shouldn't have again faced first-degree assault and first-degree attempted robbery charges because the jury that heard his first trial on those counts convicted him of lesser offenses, in effect acquitting him of the higher crimes.

He argued that charging him again with the higher counts violated his Fifth Amendment right to be free from being prosecuted twice for the same crime.

A Supreme Court majority disagreed.

Writing for the majority, Justice Susan Owens said Washington law has long held that prosecutors can refile original charges, including those for higher offenses, against a defendant whose convictions for lesser offenses were overturned on appeal.

"We will overturn our precedent only when someone shows that it is incorrect and harmful," Owens wrote in an opinion signed by Justices Barbara Madsen, Charles Johnson, Charles Wiggins, Steven Gonzalez and Mary Yu.

"Since Glasmann has not made that showing ..., we see no reason to overturn them."

Justices Debra Stephens, Sheryl Gordon McCloud and Mary Fairhurst dissented, saying Glasmann did face double jeopardy when he was charged again with the higher crimes.

Glasmann was arrested in 2004 for what prosecutors described as a drug- and alcohol-fueled rampage during which he allegedly assaulted and kidnapped his girlfriend in Lakewood.

He was charged with first-degree assault, attempted first-degree robbery, first-degree kidnapping and obstructing a law enforcement officer.

A jury in 2006 convicted him as charged of the kidnapping and obstruction counts but found him guilty of lesser crimes on the assault and attempted robbery counts.

All of the convictions were overturned in 2012 when the Supreme Court determined that the prosecutors had committed misconduct during closing arguments by preparing a PowerPoint slide that showed Glasmann's photograph with the words, "guilty, guilty, guilty," written across it in red letters.

That was inflammatory and violated Glasmann's right to a fair trial, the high court ruled in a 5-4 opinion.

The decision has been cited by higher courts in subsequent reversals, including the felony harassment and prostitution convictions of former Pierce County Superior Court Judge Michael Hecht and recently of Odies Walker, who'd been convicted for masterminding the fatal robbery of an armored-car guard in Lakewood.

After the Supreme Court decision, Pierce County prosecutors reinstated the original charges against Glasmann. He appealed before the case went to trial for the second time.

In Thursday's opinion, Justice Owens said prosecutors were within their rights.

The jury that heard Glasmann's trial left blank the verdict forms for the counts of first-degree assault and attempted first-degree robbery, Owens noted.

Washington juries unable to agree on a verdict on a higher count can consider lesser counts without issuing a "guilty" or "not guilty" finding on the higher count.

That meant jurors in Glasmann's trial were deadlocked on the higher counts and had not acquitted him of them, Owens wrote. Therefore, double jeopardy did not attach to the higher counts, and prosecutors were free to refile them, the justice said.

Stephens said the majority was getting it wrong.

A jury "unable to agree" on the higher counts is not the same thing as a deadlocked jury, she wrote. Under the law, only a judge can declare a jury deadlocked, Stephens added. That did not happen in Glasmann's case.

"Contrary to the majority's view, the jury cannot hang itself," she said. "Without a judicial finding of a manifest necessity for retrial, jeopardy terminates upon entry of the jury's verdict on the lower charge."

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