



Double Jeopardy (Scotland) Act 2011

2011 asp 16

Exceptions to rule against double jeopardy

2 Tainted acquittals

- (1) A person who, whether on indictment or complaint (the “original indictment or complaint”), has been acquitted of an offence (the “original offence”) may, provided that the condition mentioned in subsection (2) is satisfied, be charged with, and prosecuted anew for—
 - (a) the original offence,
 - (b) any other offence of which it would have been competent to convict the person on the original indictment or complaint,
 - (c) an offence which—
 - (i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment or complaint, and
 - (ii) is an aggravated way of committing the original offence.
- (2) The condition is that the High Court has, on the application of the Lord Advocate—
 - (a) set aside the acquittal, and
 - (b) granted authority to bring a new prosecution.
- (3) The court may not set aside the acquittal unless it—
 - (a) is satisfied that the acquitted person or some other person has (or the acquitted person and some other person have) been convicted of an offence against the course of justice in connection with the proceedings on the original indictment or complaint, or
 - (b) concludes on a balance of probabilities that the acquitted person or some other person has (or the acquitted person and some other person have) committed such an offence against the course of justice.
- (4) Where the offence against the course of justice consisted of or included interference with a juror or with the trial judge, the court must set aside the acquittal if it—
 - (a) is unable to conclude that the interference had no effect on the outcome of the proceedings on the original indictment or complaint, and
 - (b) is satisfied that it is in the interests of justice to do so.

- (5) But the acquittal is not to be set aside if, in the course of the trial, the interference (being interference with a juror and not with the trial judge) became known to the trial judge, who then allowed the trial to proceed to its conclusion.
- (6) Where the offence against the course of justice is not one mentioned in subsection (4), the acquittal may be set aside only if the court is satisfied—
- (a) on a balance of probabilities as to the matters mentioned in subsection (7), and
 - (b) that it is in the interests of justice to do so.
- (7) The matters referred to in subsection (6)(a) are—
- (a) that the offence led to—
 - (i) the withholding of evidence which, had it been given, would have been capable of being regarded as credible and reliable by a reasonable jury, or
 - (ii) the giving of false evidence which was capable of being so regarded, and
 - (b) that the withholding, or as the case may be the giving, of the evidence was likely to have had a material effect on the outcome of the proceedings on the original indictment or complaint.
- (8) In this section, “offence against the course of justice” means an offence of perverting, or of attempting to pervert, the course of justice (by whatever means and however the offence is described) and—
- (a) includes—
 - (i) an offence under section 45(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (aiding, abetting, counselling, procuring or suborning the commission of an offence under section 44 of that Act),
 - (ii) subornation of perjury, and
 - (iii) bribery,
 - (b) does not include—
 - (i) perjury, or
 - (ii) an offence under section 44(1) of that Act (statement on oath which is false or which the person making it does not believe to be true).

3 Admission made or becoming known after acquittal

- (1) A person who, whether on indictment or complaint (the “original indictment or complaint”), has been acquitted of an offence (the “original offence”) may, if the conditions mentioned in subsection (3) are satisfied, be charged with, and prosecuted anew for—
- (a) the original offence,
 - (b) an offence mentioned in subsection (2) (a “relevant offence”).
- (2) A relevant offence is—
- (a) an offence (other than the original offence) of which it would have been competent to convict the person on the original indictment or complaint, or
 - (b) an offence which—
 - (i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment or complaint, and

- (ii) is an aggravated way of committing the original offence.
- (3) The conditions are that—
 - (a) after the acquittal—
 - (i) the person admits to committing the original offence or a relevant offence, or
 - (ii) such an admission made by that person before the acquittal becomes known, and
 - (b) the High Court, on the application of the Lord Advocate, has—
 - (i) set aside the acquittal, and
 - (ii) granted authority to bring a new prosecution.
- (4) The court may set aside the acquittal only if satisfied—
 - (a) in the case of an admission such as is mentioned in subsection (3)(a)(ii), that the admission was not known, and could not with the exercise of reasonable diligence have become known, to the prosecutor by the time of the acquittal in respect of the original offence,
 - (b) that the case against the person is strengthened substantially by the admission,
 - (c) that, on the admission and the evidence which was led at the trial in respect of the original offence, it is highly likely that a reasonable jury properly instructed would have convicted the person of—
 - (i) the original offence, or
 - (ii) a relevant offence, and
 - (d) that it is in the interests of justice to do so.

4 New evidence

- (1) A person who, on indictment in the High Court (the “original indictment”), has been acquitted of an offence (the “original offence”) may, if the conditions mentioned in subsection (3) are satisfied, be charged with, and prosecuted anew for—
 - (a) the original offence,
 - (b) an offence mentioned in subsection (2) (a “relevant offence”).
- (2) A relevant offence is—
 - (a) an offence (other than the original offence) of which it would have been competent to convict the person on the original indictment, or
 - (b) an offence which—
 - (i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment, and
 - (ii) is an aggravated way of committing the original offence.
- (3) The conditions are that—
 - (a) there is new evidence that the person committed the original offence or a relevant offence, and
 - (b) the High Court, on the application of the Lord Advocate, has—
 - (i) set aside the acquittal, and
 - (ii) granted authority to bring a new prosecution in the High Court.

Status: This is the original version (as it was originally enacted).

- (4) For the purposes of subsection (3)(a), evidence which was not admissible at the trial in respect of the original offence but which is admissible at the time the court considers the application under subsection (3)(b) is not new evidence.
- (5) Only one application may be made under subsection (3)(b) to set aside the acquittal of an original offence.
- (6) But an application may not be made to set aside the acquittal of an original offence if the person was charged with, and prosecuted anew for, that offence by virtue of this section.
- (7) The court may set aside the acquittal only if satisfied that—
 - (a) the case against the person is strengthened substantially by the new evidence,
 - (b) the new evidence was not available, and could not with the exercise of reasonable diligence have been made available, at the trial in respect of the original offence,
 - (c) on the new evidence and the evidence which was led at that trial, it is highly likely that a reasonable jury properly instructed would have convicted the person of—
 - (i) the original offence, or
 - (ii) a relevant offence, and
 - (d) it is in the interests of justice to do so.