



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.

Status: This is the original version (as it was originally enacted).

- (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).