No. 02-524

IN THE

Supreme Court of the United States

JANETTE PRICE, Warden,

Petitioner,

vs.

DUYONN ANDRE VINCENT,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Is it clearly established by United States Supreme Court precedent that a statement by a trial court indicating an intent to grant a motion for a directed verdict on one count that was followed throughout the trial with actions inconsistent with this intent, constituted an acquittal for the purpose of the Double Jeopardy Clause?

2. Was the Michigan Supreme Court's decision that there was no acquittal because the trial court's statements and actions, when viewed as a whole, were insufficiently explicit to constitute an acquittal a reasonable application of the relevant clearly established double jeopardy precedents of this Court?

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INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

This case lies at the intersection of one of the most important means of protecting the integrity of state criminal justice systems, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and the most potent weapon in the defendant's

1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

criminal procedure arsenal, double jeopardy. The Sixth Circuit merely paid lip service to the deferential standard of 28 U. S. C. § 2254(d), by quoting the provision and then refusing to apply it to the case. Instead of determining whether the Michigan Supreme Court's decision reasonably applied this Court's precedents, the Sixth Circuit made its own determination of whether the trial court violated the Double Jeopardy Clause. This is precisely what Congress intended to prevent when it enacted the AEDPA.

The Sixth Circuit's refusal to follow the AEDPA is compounded by its faulty double jeopardy analysis. It held that an oral indiction of an intent to acquit is an acquittal in spite of the lack of a final judgment or the numerous subsequent actions of the trial court that were inconsistent with granting an acquittal. This would turn double jeopardy into a windfall for lucky defendants. Because a successful double jeopardy defense prevents retrial, it is imperative that the boundaries of what constitutes an acquittal be clearly established, so that double jeopardy remains an important, but limited, constitutional protection rather than a trap for the unwary trial court. The Sixth Circuit's failure to follow the AEDPA and the minefield it would lay for trial courts are contrary to the interests of justice and society that the CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

Markeis Jones was shot to death during a confrontation between two groups of young people at Hamady High School in Flint, Michigan. *People* v. *Vincent*, 565 N. W. 2d 629, 630 (Mich. 1997). The defendant, Duyonn Vincent, was there with two friends, none of whom attended the school. *Ibid.* There was evidence that the shooting was gang related. See *ibid.* An encounter between the two groups led to arguing, pushing, and shoving. During the encounter, the fatal shots were fired from the back of a Mustang. Testimony indicated that the defendant and a co-defendant, Deamon Perkins, fired the shots. The other

co-defendant, Marcus Hopkins, drove the car away during the shooting. There was evidence that the shots missed their intended victim, while killing Jones, a friend of the defendants. See *ibid*.

The three defendants were charged with murder and felony firearm and were tried at one trial before two separate juries. *Ibid*. At the close of the prosecution's case, all three defendants moved for a direct verdict of acquittal on the first-degree murder charge. See *ibid*. After the defense completed its argument for the motion, the trial court judge made the following statement:

> "Well my impression at this time is that there's not been shown premeditation or planning in the, in the alleged slaying. That what we have at the very best is Second Degree Murder. I don't see that the participation of any of the defendants is any different then anyone else as I hear the comment made by Mr. Doll [counsel for Perkins] about the short time in which his client was in the vehicle. But I think looking at it in a broad scope as to what part each and every one of them played, if at all, in the event that it's not our premeditation planning episode. It may very well be the circumstance for bad judgement was used in having weapons but the weapons themselves may relate to a type of intent, but don't necessarily have to show the planning of premeditation. I have to consider all the factors. I think that the second Count should remain as it is, felony firearm. And I think that Second Degree Murder is an appropriate charge as to the defendants. Okay." *Ibid*.

The jury was not present during this discussion. Before adjournment, the prosecutor asked for time the next day " 'to make a brief restatement in terms of First Degree Murder . . . .' " *Ibid*. The judge stated that he would " 'be glad to hear it . . . [and that he was] always glad to hear [the] people.' " *Ibid*. After hearing the prosecution's argument the next day, the judge decided to reserve his ruling on the motion until he thought more about it. *Id*., at 630-631. Defense counsel

asserted that double jeopardy prevented reconsideration because the court had already granted an acquittal. See *id*., at 631. The judge replied that " 'I haven't directed a verdict to anybody . . . . Oh, I granted a motion but I have not directed a verdict.' " *Ibid*. Vincent was convicted of first-degree murder. See *ibid*.

A Michigan Court of Appeals reversed Vincent's conviction on the first-degree murder count, holding that this murder conviction violated his double jeopardy rights. See *id*., at 632. The Michigan Supreme Court reversed. After extensively analyzing the statement and the relevant Supreme Court precedent on double jeopardy, it held that the trial judge was simply thinking out loud when he made the statement. The statement should have no "final or binding effect until formally incorporated into the findings, conclusions, or judgment." *Id*., at 635. Since there was no "clear statement in the record or a signed order in the judgment articulating the reasons for granting or denying the motion" there was no acquittal and therefore no double jeopardy violation. See *id*., at 636.

Defendant filed a federal habeas petition on January 8, 1998, in the United States District Court for the Eastern District of Michigan. See *Vincent* v. *Jones*, 292 F. 3d 506, 509-510 (CA6 2002). The District Court concluded that the first-degree murder conviction violated the Double Jeopardy Clause of the Fifth Amendment and granted the writ. See *id*., at 510. The Sixth Circuit affirmed in a brief opinion which stated the deferential standard of 28 U. S. C. § 2254(d)(1) & (2), see *ibid*., but never applied it to its analysis. See *id*., at 511-512. Instead, the court simply concluded that the trial court's statement constituted an acquittal with respect to first-degree murder, and that the subsequent first-degree murder conviction violated double jeopardy. See *id*., at 512. This Court granted certiorari on January 10, 2003.

SUMMARY OF ARGUMENT

The Sixth Circuit did not apply 28 U. S. C. § 2254(d) to this case, but merely paid lip service to the law. Except for reciting the statutory language and a citation to *Williams* v. *Taylor*, 529 U. S. 362 (2000), the decision below makes no use of this provision. Instead it only analyzes whether the trial court's actions violated the Double Jeopardy Clause. The opinion does not examine the detailed double jeopardy analysis of the Michigan Supreme Court's opinion affirming the conviction. This is a total failure to apply the Antiterrorism and Effective Death Penalty Act of 1996, making it necessary to begin the § 2254(d) analysis from scratch.

This case demonstrates that the relevant clearly established rules must be defined at an appropriate level of abstraction for § 2254(d) analysis. This Court has recognized many general principles behind the Double Jeopardy Clause. Applications of *Teague* v. *Lane*, 489 U. S. 288 (1989) and qualified immunity both demonstrate that defining the relevant rule at too high a level of abstraction renders such standards meaningless. If the relevant rule is sufficiently abstract, then any imagined rule can be dictated by it, subverting *Teague*, or an officer's action can always unreasonably violate it, subverting qualified immunity. These problems pose similar threats to § 2254(d)'s deferential standards. The general principles of double jeopardy are too abstract to govern the § 2254(d) analysis.

This Court's double jeopardy cases provide some rules that are sufficiently concrete to govern this case. These rules can be summarized into four points. First, granting an acquittal is the most serious action a trial court can take because acquittals cannot be appealed no matter how erroneous. Second, what constitutes an acquittal for double jeopardy purposes is not decided by the label attached to it, but by determining whether the action resolved some or all of the factual elements of the crime in the defendant's favor. Third, other terminations of the case in the defendant's favor, whether before or after the verdict, are not protected by double jeopardy. Fourth, in order

to invoke double jeopardy, it must be plain that the action terminating the case was an acquittal.

The Michigan Supreme Court applied these principles. It cited Supreme Court precedent for the points that the label attached to the trial court's actions did not determine whether there was an acquittal. It also cited this Court's precedent for the point that an entry of acquittal would bar further proceedings due to the Double Jeopardy Clause. This effectively covers the first three principles. The Michigan Supreme Court also stated the fourth principle, that acquittals must be clear, without citing Supreme Court precedent. Such citation is unnecessary for compliance with § 2254(d)'s "clearly established" prong.

Michigan's high court reasonably applied these principles to this case. It was confronted with a potentially difficult case, due to the tension between the trial court's initial statement and its subsequent actions. While the initial statement indicated an intent to grant an acquittal, every other action of the trial court after the statement argues to the contrary. In this context, the decision to apply the principle that acquittals must be clear in order to terminate jeopardy was not merely reasonable, it was right.

Acquittals must be clear because of the awesome finality accorded to them through the Double Jeopardy Clause. Requiring clear acquittals prevents defendants from receiving unjust windfalls, and allows appellate courts to distinguish between appealable dismissal and unappealable acquittals.

This decision is also consistent with this Court's holdings rejecting labels in acquittal analysis. There are no magic words that transform a trial court's actions into an acquittal. Instead, reviewing courts look to what was done and the reasons given for the actions. Here, the trial court thought out loud about acquitting the defendant on the first-degree murder charge, allowed the prosecution to respond, and then proceeded to act as if it decided not to acquit. This is not an acquittal.

The trial court's actions lacked the necessary finality that double jeopardy requires. While acquittals terminate jeopardy, an action of a court is not an acquittal until it is final. For example, a finding on appeal that there was insufficient evidence to convict bars retrial; it does not bar further appeal. If the initial decision is reversed on appeal or reconsideration, there was no acquittal. Similarly, a trial court's action should not be an acquittal until something resembling a final judgment is entered. Since there is nothing like that in this case, there was no acquittal, making the Michigan Supreme Court's opinion correct.

ARGUMENT

I. The Sixth Circuit did not apply 28 U. S. C. § 2254(d).

It is the duty of courts, both state and federal, "to uphold federal law." See *Stone* v. *Powell*, 428 U. S. 465, 494, n. 3 (1976). Unfortunately, too many federal courts pay too little attention to the habeas reforms of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and this Court's interpretation of that law. Twice this term the Court has summarily reversed in habeas cases for failing to apply the deferential standard for state court decisions required by 28 U. S. C. § 2254(d). See *Woodford* v. *Visciotti*, 537 U. S. __, 154 L. Ed. 2d 279, 123 S. Ct. 357 (2002) (*per curiam*); *Early* v. *Packer*, 537 U. S. __, 154 L. Ed. 2d 263, 123 S. Ct. 362 (2002) (*per curiam*). In *Visciotti*, the Ninth Circuit "mischaracterized" the California Supreme Court's decision in the case, and entertained a "readiness to attribute error [that] is inconsistent with the presumption that state courts know and follow the law." See 154 L. Ed. 2d, at 286, 123 S. Ct., at 360. Its application of § 2254(d)'s "unreasonable application" clause "substituted its own judgment for that of the state court, in contravention of 28 U. S. C. § 2254(d)." *Ibid.* *Packer* addressed a similar failure to follow the AEDPA. There the Ninth Circuit faulted the state court for adhering to a state standard that was

even more protective of the defendant's rights than this Court's standard. See 154 L. Ed. 2d, at 270, 123 S. Ct., at 365. The Ninth Circuit also mischaracterized the state court's consideration of defendant's claims and faulted the state court for not following Supreme Court decisions on nonconstituitonal federal law issues, which are not binding on state courts. See *id*., at 270-271, 123 S. Ct., at 365-366.

The Sixth Circuit's decision in this case is an even more flagrant disregard of Congress's limits on federal habeas corpus. While the Court of Appeals opinions in *Visciotti* and *Packer* at least attempted to apply the AEDPA, the Sixth Circuit merely paid lip service to the law. The only "analysis" of the AEDPA was to quote 28 U. S. C. § 2254(d) at the beginning of its discussion and to then summarize the § 2254(d)(1) standard with a citation to *Williams* v. *Taylor*, 529 U. S. 362 (2000). See *Vincent* v. *Jones*, 292 F. 3d 506, 510 (CA6 2002). Next, after noting and dismissing Michigan's contention that the Michigan Supreme Court's conclusion that there was no directed verdict was a factual determination governed by 28 U. S. C. § 2254(e), see *id*., at 509, and n. 2, the federal court made no further mention of the AEDPA and completely failed to apply § 2254(d). The very brief opinion simply sets forth its analysis of some of this Court's double jeopardy cases, a short analysis of the trial court's statements, and its conclusion that "[b]y later submitting the case to the jury on the open murder charge, the trial judge subjected the petitioner to prosecution for first-degree murder in violation of the Double Jeopardy Clause." *Id*., at 512.

It is as if the AEDPA had not been passed. In addition to ignoring § 2254(d), the Sixth Circuit makes no substantive analysis of decisions interpreting this provision, and does not address the Michigan Supreme Court's decision substantively. The opinion makes only one analytical reference to the decision that should be its focus. After determining that whether the trial court acquitted the defendant of first-degree murder was not a finding of fact, the Court of Appeals concluded that "we

are not bound by the holdings of the Michigan Supreme Court that the trial judge's statements did not constitute a directed verdict under Michigan law." See *id*., at 511. While that statement is relevant to the § 2254(d)(1) analysis, it does nothing to clarify whether the Michigan Supreme Court's opinion failed either the "contrary to" or "unreasonable application," standards of § 2254(d). Michigan's high court engaged in extensive analysis of the double jeopardy issue. It relied on the double jeopardy precedents of this Court, see Part II, *infra*, and thoroughly analyzed those precedents as applied to this case. See Part III, *infra*. The Court of Appeals' approach does not "ensure that state-court convictions are given effect to the extent possible by law." *Bell* v. *Cone*, 535 U. S. 685, 152 L. Ed. 2d 912, 926, 122 S. Ct. 1843, 1849 (2002). The Sixth Circuit simply ignored the state court's reasoned opinion and decided the issue on its view of the merits.

This term *amicus* CJLF has already provided this Court its views on how to improve the administration of the AEDPA. Some standard for assessing when a state court's decision is reasonable can prevent misapplication of § 2254(d) by the lower courts. A definition that focuses on whether the opinion was plausible is preferable to the tendency of some courts to examine the acceptable level of "error" in the state court opinion. See Brief for Criminal Justice Legal Foundation as *Amicus Curiae* in *Lockyer* v. *Andrade*, No. 01-1127, at 22-30. Since this Court will probably issue an opinion in *Andrade* before it will decide this case, extensive elaboration of the arguments already made in that case is unnecessary. This case can serve to examine one facet of applying the AEDPA.

The "deceptively plain language" of the Double Jeopardy Clause[2] is surrounded by a subtle and complex body of precedent. See *Crist* v. *Bretz*, 437 U. S. 28, 33 (1978). This often opaque field is an excellent candidate for analyzing how to

2. "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . . ." U. S. Const. Amdt. 5.

determine what is the relevant body of "clearly established" Supreme Court precedent, see part II, *infra*, and how to determine whether that law is reasonably applied. See part III, *infra*.

II. The Michigan Supreme Court applied the relevant law that was clearly established by this Court.

A. General Principles.

Because the Sixth Circuit did not apply the AEDPA, it is necessary to start with the first principles of this law. Determining the clearly established law is the threshold question in AEDPA cases. See *Williams* v. *Taylor*, 529 U. S. 362, 390 (2000). What qualifies as an "old rule" under *Teague* v. *Lane*, 489 U. S. 288 (1989) will qualify as "clearly established" under AEDPA so long as the inquiry is limited to this Court's precedents. *Williams*, *supra*, at 412. Determining first what is clearly established limits the scope of the reviewing court's analysis. A court that carefully examines this Court's precedents for clearly established principles may be less likely to grant habeas due to a simple disagreement with the state court over the proper constitutional rule.

The common law development of double jeopardy began sometime in the thirteenth century and by the seventeenth century had evolved "into four common law pleas: autrefois acquit (former acquittal), autrefois convict (former conviction), autrefois attaint (former attainder), and pardon." See Office of Legal Policy, Report to the Attorney General on Double Jeopardy and Government Appeals of Acquittals (1987), reprinted in 22 U. Mich. J. L. Ref. 831, 843-844 (1989). The common law pleas were described in some detail by Blackstone. See 4 W. Blackstone, Commentaries 329-332 (1st ed. 1769). The Double Jeopardy Clause "tracked Blackstone's statement of the principles of *autrefois acquit* and *autrefois convict*," *United States* v. *Wilson*, 420 U. S. 332, 341-342

(1975), rooting the clause in the common law pleas. See *United States* v. *Scott*, 437 U. S. 82, 87 (1978).

The purpose of the clause is derived from its history.

> "The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." *United States* v. *Green*, 355 U. S. 184, 187-188 (1957); accord *Scott*, 437 U. S., at 87.

The history and purpose of the Clause have only limited use in its modern application. "These historical purposes are necessarily general in nature, and their application has come to abound in often subtle distinctions which cannot by any means all be traced to the original three common law pleas . . . ." *Scott*, 437 U. S., at 87. The problem is that modern criminal procedure is radically different from criminal procedure at the common law or the founding. For example, the present case turns on the meaning of the trial court's response to defendant's motion for a directed verdict at the close of the prosecution's evidence, a procedure that did not exist at either the common law or the founding. Directed verdicts first appeared in criminal cases in this country after the Civil War. See Phillips, The Motion for Acquittal: A Neglected Safeguard, 70 Yale L. J. 1151, 1152, n. 8 (1961); Sauber & Waldman, Unlimited Power: Rule 29(A) and the Unreviewability of Directed Judgments of Acquittal, 44 Am. U. L. Rev. 433, 439 (1994). It was not codified by Congress until the Criminal Appeals Act of March 2, 1907, see Sauber & Waldman, *supra*, at 440. Much of this Court's precedent on acquittals and double jeopardy concerns the prosecution's right to appeal when the case ends in something other than a judgment of guilt. The two double jeopardy cases cited by the Sixth Circuit, *United States* v.

Martin Linen Supply Co., 430 U. S. 564 (1977) and *Smalis* v. *Pennsylvania*, 476 U. S. 140 (1986), see *Vincent* v. *Jones*, 292 F. 3d 506, 511 (CA6 2002), both involve this type of appeal. See *Martin Linen*, *supra*, at 566-567; *Smalis*, *supra*, at 141. The Michigan Supreme Court relied on these cases and *Wilson*, *supra*, another government appeal case, see 420 U. S., at 333, in its much more extensive double jeopardy analysis. See *People* v. *Vincent*, 565 N. W. 2d 629, 633-636 (Mich. 1997).[3] The right to appeal is also a relative latecomer to criminal procedure. The defendant had no right to appeal in criminal cases until the late nineteenth century, and the United States did not have a real right to appeal until 1971. See Sauber & Waldman, 44 Am. U. L. Rev., at 440. The lack of government appeals stunted this Court's analysis of acquittals and their effects. See *Scott*, 437 U. S., at 89-90. This aspect of double jeopardy law did not begin to develop until Congress gave the United States full appellate rights in criminal cases in 1971 and the Double Jeopardy Clause was applied to the states in *Benton* v. *Maryland*, 395 U. S. 784, 796 (1969).

There are many general principles that govern this recently developed body of law. The passage from *Green* quoted above is the most noteworthy. A "primary purpose" of the Clause is to "preserve the finality of judgments." *Crist* v. *Bretz*, 437 U. S. 28, 33 (1987); see also *Scott*, 437 U. S., at 92 ("integrity of a final judgment"). "But it has also been said that 'central to the objective of the prohibition against successive trials' is the barrier to 'affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.' " *United States* v. *DiFrancesco*, 449 U. S. 117, 128 (1980) (quoting *Burks* v. *United States*, 437 U. S. 1, 11 (1978)). *DiFrancesco*, "[t]he most complete discussion by the Supreme

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3. The Michigan Supreme Court also relied on state and intermediate federal appellate decisions. See *ibid*. Since the law must be clearly established from this Court's precedents, see 28 U. S. C. § 2254(d)(1), these cases have only limited bearing on the issue of what law is clearly established.

Court of the policies underlying the double jeopardy clause," 5 W. LaFave, J. Israel, & N. King, Criminal Procedure § 25.1(a), p. 630 (2d ed. 1999), summarizes other double jeopardy principles developed by the court. Justice Blackmun's opinion notes that "[a]n acquittal is accorded special weight" so that " '[i]f the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair,' " *DiFrancesco*, 449 U. S., at 129 (quoting *Arizona* v. *Washington*, 434 U. S. 497, 503 (1978)), but that the government can proceed again "where the trial has not ended in an acquittal." See *id*., at 130. Finally, the government may retry defendants who successfully appeal unless the reversal was based on an insufficiency of the evidence. See *id*., at 131.

Although clearly established, these principles do not define the relevant body of law for the § 2254(d) inquiry. The statements are too abstract to govern the question presented by this case—what constitutes an acquittal with respect to double jeopardy. Accepting abstract principles like these as the relevant body of precedent would compromise the deferential standard of § 2254(d).

This Court has addressed the issue of abstraction and reasonableness in closely related contexts. The most instructive example is found in the application of *Teague* v. *Lane*, 489 U. S. 288 (1989). *Sawyer* v. *Smith*, 497 U. S. 227 (1990) held that analyzing the *Teague* issue at too high a level of abstraction would destroy the rule. The case addressed whether *Caldwell* v. *Mississippi*, 472 U. S. 320 (1985) was a new rule under *Teague*. See *Sawyer*, *supra*, at 229. *Caldwell* had held "that the Eighth Amendment prohibits the imposition of a death sentence by a sentencer that has been led to the false belief that the responsibility for determining the appropriateness of the defendant's capital sentence rests elsewhere." *Id*., at 233. The petitioner in *Sawyer* asserted that *Caldwell* was dictated "by the principal of reliability in capital sentencing." See *id*., at 236. Although reliability in sentencing was a thoroughly established

principle at the time his conviction was final, see *id*., at 235, it could not govern the *Teague* analysis. "But the test would be meaningless if applied at this level of generality." *Id*., at 236. Any rule that does not contradict one of this Court's decisions can be justified by some sufficiently general legal principle.

Sawyer took its cue from the qualified immunity case of *Anderson* v. *Creighton*, 483 U. S. 635 (1987). See 497 U. S., at 236. Qualified immunity protects government officials performing discretionary functions by "shielding them from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson*, *supra*, at 638. This is a test of "objective legal reasonableness" which is examined under the law that was "clearly established" at the time of the allegedly unlawful action. See *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818-819 (1982). *Anderson* involved a warrantless search of a house conducted by Officer Anderson and other officers because they thought a suspected bank robber might be there. 483 U. S., at 637. The Court of Appeals' analysis "consisted of little more than an assertion that a general right Anderson was alleged to have violated—the right to be free from warrantless searches of one's home unless the searching officers have probable cause and there are exigent circumstances—was clearly established." *Id*., at 640. It did not address "the argument that it was *not* clearly established that the circumstances with which Anderson was confronted did not constitute probable cause and exigent circumstances." *Id*., at 640-641 (emphasis in original). Allowing this level of generality to establish the standard of legal reasonableness would destroy the test. "For example, the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right. Much the same could be said about any other constitutional or statutory violation." *Id*., at 639. The circuit court's refusal to examine the more specific applications of the Fourth Amendment "was erroneous." *Id*., at 641.

This analysis also governs § 2254(d). *Teague*'s new rule analysis is already closely connected to the AEDPA's clearly established inquiry. See *Williams*, 529 U. S., at 412. *Teague*, qualified immunity, and the AEDPA each protect reasonable government actions from federal judicial review. See *Sawyer*, 497 U. S., at 234; *Anderson*, 483 U. S., at 639; 28 U. S. C. § 2254(d)(1). Setting the clearly established law at too high a level of generality would subvert the AEDPA as readily as it would *Teague* and qualified immunity. The principles previously surveyed, see *supra*, at 10-13, are too general to govern this case. Instead, it is necessary to determine what is clearly established about the meaning of acquittal in the context of the facts of this case.

B. The Concrete Rules.

The question of what constitutes an acquittal has not been addressed often by this Court. The first modern case addressing acquittals is *Green* v. *United States*, 355 U. S. 184 (1957), in which the jury was instructed on both first- and second-degree murder, and convicted Green of the lesser offense. After the conviction was overturned, he was retried and convicted of first-degree murder. See *id*., at 186. *Green* held that the first verdict was an implicit acquittal of the greater charge, and double jeopardy prevented retrial on the first-degree murder count. See *id*., at 190-191. This holding does not shed any light on the present case. *Green* posed a relatively simple problem of interpreting a jury's verdict. It is difficult to argue with the logic that silence on the greater offense is an acquittal when the jury convicts on the lesser offense. The present case does not involve a silent verdict, but rather the meaning of the trial court's words and actions. *Green*'s real significance is its holding that a successful appeal by the defendant does not waive double jeopardy. See *id*., at 191-192.

Acquittal decisions typically come in the context of government appeals. The next decision after *Green*, *Fong Foo* v. *United States*, 369 U. S. 141 (1962) (*per curiam*), sets the

pattern. The District Court, relying on alleged prosecutorial misconduct, directed the jury to return a verdict for the defendant. See *id*., at 142. The Court of Appeals set aside the acquittal, holding that the District Court lacked the power to acquit on this ground. See *ibid*. This Court reversed, holding that an acquittal, even if "based upon an egregiously erroneous foundation" was final and could not be appealed. *Id*., at 143. Although it does not dwell on what constitutes an acquittal, *Fong Foo* highlights the importance of that decision. An injustice was perpetrated on the people by the District Court in *Fong Foo*, one that could not be corrected because of the absolute finality of acquittals.

The first significant discussion of what was an acquittal, rather than the acquittal's effect, is found in *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564 (1977). *Martin Linen* addressed whether an acquittal granted by a trial court after a hung jury was appealable. See *id*., at 566-567. The double jeopardy analysis focused on the need to protect defendants from the threat of a second trial. See *id*., at 569. Because a successful appeal would require a second trial, it was necessary to "inquire further into the constitutional significance of a [Federal Rules of Criminal Procedure] Rule 29(c) acquittal." *Id*., at 571. This Court then established the standard for assessing whether a judge's action is treated as an acquittal for double jeopardy purposes. What constitutes an

> " 'acquittal' is not to be controlled by the form of the judge's action. Rather, we must determine whether the ruling of the judge, *whatever its label*, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." *Id*., at 571 (emphasis added; citations and footnote omitted).

Martin Linen did not require any heavy analytical lifting once this point was made. There was no question that the Rule 29(c) grant satisfied this test. The District Court proclaimed that this was "the weakest [contempt case that] I've ever seen." *Id*., at 572 (internal quotation marks omitted). When it entered

the judgments of acquittal, the court wrote that "the government has failed to prove the material allegations beyond a reasonable doubt . . . ." *Ibid*. (internal quotation marks omitted). Because the District Court had "evaluated the Government's evidence and determined that it was legally insufficient to sustain a conviction," see *ibid*., there was an acquittal protected by double jeopardy. See *id*., at 575.

The *Martin Linen* test has two components. The first is a warning against allowing labels to mislead the analysis. This is an old and uncontroversial point. Cf. *Snyder* v. *Massachusetts*, 291 U. S. 97, 114 (1934) ("tyranny of labels"). This is not a grant of power to a reviewing court to superimpose its ideas on that of the trial court. The trial court's statements and the effects of its actions are relevant to the inquiry, as demonstrated by *Martin Linen*'s reliance on the District Court's statement of its reasons for granting the acquittal.

The second part of the test limits the inquiry to the factual elements of the offense. Legal rulings terminating the case in the defendant's favor do not come under *Martin Linen*'s definition of acquittal. In *United States* v. *Wilson*, 420 U. S. 332 (1975), this Court allowed the government to appeal a dismissal of the indictment rendered after a guilty verdict. See *id*., at 333. The defendant had no right to benefit from an error of law where it could be corrected without resorting to another trial. *Id*., at 345. *Martin Linen* applies *Wilson*'s distinction to the definition of acquittal.

This distinction was given greater importance in *United States* v. *Scott*, 437 U. S. 82 (1978), which allowed the government to appeal dismissals rendered before the verdict. See *id*., at 84. Double jeopardy did not bar the government's appeal even though success would require retrial. In this context, double jeopardy only protected acquittals, which were limited to *Martin Linen*'s definition, see *id*., at 97, effectively extending *Wilson* to midtrial dismissals. *Scott* expounded on what constituted an acquittal, noting that acquittals could be based on the prosecution's failure to rebut affirmative defenses, or

derived from " 'erroneous evidentiary rulings or erroneous interpretations of governing legal principles . . . .' " *Id*., at 98 (quoting *id*., at 106, Brennan, J., dissenting). However, an acquittal still must involve a rejection of at least some of the material facts of the crime.[4]

Scott makes this distinction relevant to the present case, which deals with the trial court's actions before the verdict. It also affirms another important, clearly established concept that limits the definition of acquittal. "Where the court, before the jury returns a verdict, enters a judgment of acquittal pursuant to Fed. Rule Crim. Proc. 29, appeal will only be barred when 'it is *plain* that the District Court . . . evaluated the Government's evidence and determined that it was legally insufficient to sustain a conviction.' " *Id*., at 97 (quoting *Martin Linen*, 430 U. S., at 572) (emphasis added). This limitation naturally flows from the consequences of an acquittal and the nature of the inquiry.

Double jeopardy is unique in constitutional law. See *Justices of Boston Municipal Court* v. *Lydon*, 466 U. S. 294, 302 (1984). No matter how erroneous or unjust, the prosecu-

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4. The *Scott* Court also stated the double jeopardy "may" attach when "the trial judge terminates the proceedings favorably to the defendant on a basis not related to factual guilt or innocence." *Id*., at 92. This is dicta, *Sattazahn* v. *Pennsylvania*, 537 U. S. __ (No. 01-7574, Jan. 14, 2003) (slip op., at 12), and cannot be a clearly established rule for the § 2254(d) inquiry. See *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000) (" 'clearly established Federal law' . . . refers to the holdings, as opposed to the dicta").

Sattazahn is one of this Court's cases applying double jeopardy to capital sentencing proceedings that "have the hallmarks of the trial on guilt or innocence." See *Bullington* v. *Missouri*, 451 U. S. 430, 439 (1981). In such proceedings, decisions not to impose the death penalty are deemed acquittals that bar the imposition of that sentence in any future proceedings. *Ibid*. This unique departure from double jeopardy as applied to sentencing, see, *e.g*., *Stroud* v. *United States*, 251 U. S. 15 (1919), has little relevance to the acquittals on guilt addressed in this case.

tion cannot overcome the decision of a trial court to take the case away from the jury and order an acquittal. While Ernesto Miranda was reconvicted of rape after this Court reversed his conviction, see L. Baker, Miranda: Crime, Law and Politics 191-193 (1983), Fong Foo walked away a free man even though the United States never had a real chance to prove its case against him. Given the extreme consequences of an acquittal, it only makes sense to require that the trial court's actions clearly satisfy the *Martin Linen* test before being cloaked in double jeopardy's invincible armor.

This requirement also alleviates the strongest criticism of *Scott*'s fact/law distinction, that this standard will be too difficult to apply in a principled manner. See *Scott*, 437 U. S., at 110-111 (Brennan, J., dissenting); 15B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3919.5, p. 655 (2d ed. 1991). The *Scott* majority foresaw no problem in making this distinction, see 437 U. S., at 99, n. 12, and this prediction has proven accurate. See 5 W. LaFave, J. Israel, & N. King, Criminal Procedure § 25.3(a), p. 666 (2d ed. 1999). The plain statement requirement assures this result. If the trial court does not clearly state the reasons for the termination of the action, determining whether the termination was a dismissal or an acquittal will be much more difficult for an appellate court. See Wright, Miller, & Cooper, *supra*, § 3919.5, at 683-684.

The remaining significant acquittal cases reaffirm these principles. *Sanabria* v. *United States*, 437 U. S. 54 (1978), decided on the same day as *Scott*, held that an acquittal based upon an erroneous evidentiary ruling could not be appealed. See *id*., at 77-78. In *Smalis* v. *Pennsylvania*, 476 U. S. 140 (1986), the trial court dismissed certain charges on the ground that the evidence was legally insufficient to support a conviction. *Id*., at 141. The fact that this was labeled a demurrer rather than an acquittal was irrelevant. The finding that the evidence could not support a conviction was an acquittal for the purpose of invoking double jeopardy. See *id*., at 144.

The relevant clearly established law governing this case is that: 1) while acquittals terminate the prosecution, not all terminations favoring the defendants are acquittals; 2) what is an acquittal is not decided by the label attached to it, but by determining whether the action resolved, in the defendant's favor, some or all of the factual elements of the crime; 3) other terminations of the case, whether before or after the verdict, are not protected by double jeopardy; 4) in order to invoke double jeopardy it must be plain that the action terminating the case was an acquittal. The next question is whether the Michigan Supreme Court "correctly identifie[d] the governing legal rule." *Williams*, 529 U. S., at 407.

C. The "Contrary To" Clause.

The Michigan Supreme Court identified the correct double jeopardy principles established by this Court's precedents. A state court decision does not violate the "contrary to" clause of § 2254(d)(1) unless "the state court applies a rule different from the governing law set forth in our cases, or if it decides a case differently than we have done on a set of materially indistinguishable facts." *Bell* v. *Cone*, 535 U. S. 685, 152 L. Ed. 2d 912, 926, 122 S. Ct. 1843, 1850 (2002). Since this Court has not addressed a set of facts materially indistinguishable from this case, the only question is whether the Michigan Supreme Court applied the correct rules.

Michigan's high court relied on three United States Supreme Court opinions in its decision. It cited *Martin Linen*, *supra*, and *Wilson*, *supra*, for the proposition that the trial court's label and characterization of its actions did not determine whether they constituted an acquittal. See *People* v. *Vincent*, 565 N. W. 2d 629, 632-633 (Mich. 1997). Instead, "what we must determine is 'whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.' " *Id.*, at 633 (quoting *Martin Linen*, 430 U. S., at 571). The decision also cited *Smalis*, *supra*, for the principle

when the trial court enters an acquittal, further proceedings are barred by the Double Jeopardy Clause. See *ibid*. (citing *Smalis*, 476 U. S., at 142). These are the first three clearly established principles governing the double jeopardy issue in this case. See *supra*, at 20.

The Michigan Supreme Court also applied the remaining clearly established rule, that the acquittal must be plain. See *supra*, at 20. It held that there must be a "clear statement" or a "signed order of judgment" articulating why the motion was granted so that it was "evident that there has been a final resolution of some or all of the factual elements of the offense charged." *Vincent*, 565 N. W. 2d, at 636. The opinion may not have cited *Martin Linen* or *Scott*, or used the same language, but the effect is the same—requiring the acquittal to be plain or evident before invoking double jeopardy. A state court does not have to cite this Court's precedent to avoid violating the "contrary to" standard. So long as the correct principles are applied, their justification is not a concern. See *Early* v. *Packer*, 537 U. S. __, 154 L. Ed. 2d 263, 269-270, 123 S. Ct. 362, 365 (2002). Requiring the order to unambiguously resolve factual elements of the crime in defendant's favor before being classified as an acquittal simply follows the law set forth by this Court.

The Michigan Supreme Court's decision is not "contrary to . . . clearly established Federal law . . . ." If habeas can be granted in this case, it will be granted only if that court applied the correct principles unreasonably to the facts of this case. As we will show in the next part, the state court's decision here was not merely reasonable, it was right.

III. The Michigan Supreme Court reasonably applied the relevant clearly established law.

Once the relevant clearly established law is ascertained, the reasonable application standard should be comparatively simple to apply. The AEDPA does not ask if the federal court agrees

that the state court was correct, but only if the state court made a reasonable application of the clearly established law. *Woodford* v. *Visciotti*, 537 U. S. __, 154 L. Ed. 2d 279, 287-288, 123 S. Ct. 357, 361 (2002) (*per curiam*). Reaching the "wrong" result is not the same as an unreasonable application. See *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000). If the state court has identified and applied the clearly established law, then its interpretation of these precedents is likely to be reasonable.

This Court has not provided any detailed test to determine whether a state court's decision is reasonable. Instead, it has simply concluded after examining the relevant law that the state court decision was either reasonable, see, *e.g.*, *Visciotti*, *supra*; *Bell* v. *Cone*, 535 U. S. 685, 152 L. Ed. 2d 912, 931-932, 122 S. Ct. 1843, 1854 (2002); *Penry* v. *Johnson*, 532 U. S. 782, 795 (2001) (Fifth Amendment claim), or unreasonable. See *Penry*, *supra*, at 803-804 (Eighth Amendment claim); *Williams*, 529 U. S., at 397. Some circuit courts try to flesh out the § 2254(d) standard. The Seventh Circuit has stated, "The statutory 'unreasonableness' standard allows the state court's conclusion to stand if it is one of several equally plausible outcomes . . . . Some decisions will be at such tension with governing U. S. Supreme Court precedents, or so inadequately supported by the record, or so arbitrary, that a writ must issue." *Hall* v. *Washington*, 106 F. 3d 742, 748-749 (CA7 1997). Adopting a standard like this would be helpful in guiding the federal courts' application of § 2254(d). See Brief for Criminal Justice Legal Foundation as *Amicus Curiae* in *Lockyer* v. *Andrade*, No. 01-1127, at 22-26.

The Michigan Supreme Court's decision satisfies any test of reasonableness. This case was not simple. The trial court's conduct was less than exemplary. It acted equivocally about the single most important motion it had to rule on. Furthermore, the decision to delay ruling on the directed verdict motion violated Michigan law. See *People* v. *Vincent*, 565 N. W. 2d 629, 631, n. 1 (Mich. 1997). Granting the double

jeopardy claim would erase the jury's verdict and deprive the state of a retrial.

The greatest problem is posed by the tension between the trial court's words and actions on the day the directed verdict motion was made. Had it done nothing else that day, the statement made after the motion, see *supra*, at 3, would indicate that the trial court would dismiss the first-degree murder charge. See *id*., at 631 (quoting analysis of the Michigan Court of Appeals). The trial court's actions immediately after the statement eliminate this possibility. Allowing the prosecution to make its case the next day is inconsistent with an intent to immediately acquit the defendant. The trial court's statement came at the end of the defendant's argument supporting the directed verdict motion. See *id*., at 630. The prosecution had not yet responded, and the trial court gave the prosecution this opportunity after indicating an initial agreement with the defendants' position. In this context, the Michigan Supreme Court's conclusion that the trial court was simply thinking out loud, see *id*., at 634, was correct.

None of this Court's double jeopardy cases have addressed a similar set of facts. In each of the cases a motion had been clearly granted and the jury dismissed. See part I-B, *supra*. The question was the effect of the granted motion rather than whether a motion had been granted. Presented with this set of facts, the Michigan Supreme Court performed admirably.

The rule that a court's labeling of a motion does not control the double jeopardy analysis, see *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 571 (1977), does not change the result. Rejecting labels means that there are no magic words that automatically transform a trial court's actions into an acquittal that terminates jeopardy, or a dismissal that contemplates a government appeal and possible retrial. "The word [acquittal] itself has no talismanic quality for purposes of the Double Jeopardy Clause." *Serfass* v. *United States*, 420 U. S. 377, 392 (1975). Instead, reviewing courts must look to what was done and the reasons given for the trial court's actions. In

Martin Linen, there was an acquittal in both form by the clear grant of a Federal Rule of Criminal Procedure 29(c) motion to acquit and dismiss the jury, see 430 U. S., at 566, and in substance, by the District Court's reasons for granting the motion. See *id*., at 572. In this case, while the trial court's initial motion indicated acceptance of the defendant's position, every other action it took in the trial was to the contrary. It allowed the prosecution to rebut the defendants' claims the next day, see *Vincent*, 565 N. W. 2d, at 630, it decided to reserve its ruling on the motion after hearing the prosecution's rebuttal, see *id*., at 630-631, it stated that it had not directed a verdict, see *id*., at 631, it never applied the legal standard for directing a verdict in its initial statement, see *id*., at 634, it never entered a final order of acquittal, see *id*., at 633, and it allowed Vincent to be convicted of first-degree murder. See *id*., at 631.

The crux of the Michigan Supreme Court's analysis is that the trial court's actions were not explicit enough to acquit the defendant of the first-degree murder count. "When ruling on the sufficiency of the evidence, a court must generally give a more particularized detailed analysis on the record of the evidence and reasoning that forms the basis of the decision and a clear statement that the motion is either granted or denied." *Id*., at 634. This follows from the fourth clearly established principle, that the acquittal must be plainly evident before double jeopardy bars further action. See *supra*, at 20. Requiring clarity helps to limit the injustices caused by the irrevocable nature of acquittals. If equivocal or ambiguous statements are to be treated as acquittals, then the Double Jeopardy Clause becomes a trap rather than a right. "But neither the Double Jeopardy Clause nor any other constitutional provision exists to provide unjustified windfalls." *Jones* v. *Thomas*, 491 U. S. 376, 387 (1989). If double jeopardy is to be administered as an ancient right rather than as a technicality, see *ibid*., then its drastic sanction should be reserved for actions that are clearly acquittals.

With the language "[w]e hold that in order to qualify as a directed verdict of an acquittal . . . ," see *Vincent*, 565 N. W. 2d, at 636, the Michigan Supreme Court also recognized state rules governing directed verdicts. This does not conflict with the principle that even erroneous acquittals are protected by double jeopardy. See *Fong Foo* v. *United States*, 369 U. S. 141, 143 (1962) (*per curiam*). The Michigan Supreme Court did not merely hold that the trial court's action was procedurally erroneous. The equivocal nature of the trial court's acts made it impossible to find a resolution of some or all of the material elements of the crime in the defendant's favor, see *Vincent*, *supra*, at 636, removing the case from the Double Jeopardy Clause.

The trial court's statements lacked the finality that double jeopardy requires. An "acquittal 'represents *a resolution*, correct or not, of some or all of the factual elements of the offense charged.' " *Justices of Boston Municipal Court* v. *Lydon*, 466 U. S. 294, 309 (1984) (quoting *Martin Linen*, 430 U. S., at 571) (emphasis added in *Lydon*). There was no final judgment of acquittal in this case. The Michigan Supreme Court's conclusion that the "judge's thinking process should not have final or binding effect until formally incorporated into the findings, conclusions, or judgment," *Vincent*, 565 N. W. 2d, at 635, is a common sense interpretation of double jeopardy. A prime purpose of double jeopardy is "to protect the integrity of final judgments." See *United States* v. *Scott*, 437 U. S. 82, 92 (1978). In *United States* v. *Ball*, 163 U. S. 662 (1896), this Court held that double jeopardy did not prevent retrial after the conviction was reversed on appeal. See *id*., at 671-672. This decision "effectively formulated a concept of continuing jeopardy that has application where criminal proceedings have not run their full course." *Price* v. *Georgia*, 398 U. S. 323, 326 (1970). Acquittals terminate jeopardy "whether they are 'express or implied by a conviction on a lesser included offense.' " *Lydon*, 466 U. S., at 308 (quoting *Price*, *supra*, at 329).

When a jury returns a verdict of acquittal the proceeding is ended, even if a final judgment cannot be entered because of a defective indictment. See *Ball*, 163 U. S., at 669, 671. Judicial pronouncements are different. In *Burks* v. *United States*, 437 U. S. 1 (1978), a finding by an appellate court that the evidence was legally insufficient to convict barred retrial on double jeopardy grounds. See *id*., at 18. However, this is only true if the appellate court's ruling is left undisturbed by a higher court. See *Lydon*, 466 U. S., at 308-309. If the appellate case is capable of being reversed by a motion for reconsideration, or rehearing en banc, or by certiorari to this Court, then there is no final judgment, and jeopardy has not ended.

Similarly, a trial court's actions do not become an acquittal that terminates jeopardy until a final judgment is entered. Since there is nothing resembling that in this case, there was no acquittal.

The rules promulgated by the Michigan Supreme Court will help prevent cases like this from arising again. This is not an attempt to crush the defendant through repeated retrials, but rather an attempt to prevent him from reaping an undeserved windfall. The rules are consistent with the intent and spirit of the Double Jeopardy Clause, along with this Court's more specific applications of this provision. The Michigan Supreme Court's decision is a good faith effort to solve a problem not directly addressed by Supreme Court precedent and is both plausible and reasonable. It is the type of decision that Congress meant to protect when it enacted the AEDPA. Had the Sixth Circuit applied the AEDPA, it would not have upheld the grant of habeas corpus.

CONCLUSION

The decision of the Court of Appeals for the Sixth Circuit should be reversed.

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Respectfully submitted,

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