

# SUPREME COURT OF OHIO

## State v. Ramirez

State v. Ramirez, 2020 Ohio 602 (Ohio 2020) · No. No. 2018-0900 · Decided February 25, 2020

### SUMMARY

The Ohio Supreme Court held that the state may appeal a trial court order granting a new trial based on insufficient evidence under Crim.R. 33(A)(4). Double-jeopardy principles bar retrial after such a finding but do not prevent the state from appealing to reinstate the jury verdict. R.C. 2945.67 does not classify a new-trial order as a “final verdict,” so the state may appeal by leave. The court also noted that Crim.R. 33(A)(4) is in tension with current double-jeopardy law (*Hudson v. Louisiana*), as a new trial cannot actually occur after an insufficiency finding.

### CASE DETAILS

|                       |                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                   |
| WRITING FOR THE COURT | DeWine, J.; O'Connor, C.J.; Kennedy, J.; Donnelly, J.; Fischer, J.; French, J.; Stewart, J.                                                                                                             |
| JURISDICTION          | Ohio                                                                                                                                                                                                    |
| DECIDED               | February 25, 2020                                                                                                                                                                                       |
| DOCKET                | No. 2018-0900                                                                                                                                                                                           |
| DISPOSITION           | reversed                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Appeal from the Court of Appeals for Lucas County, No. L-17-1076, 2018-Ohio-1870, which dismissed the state's appeal from an order granting a new trial based on insufficient evidence.                 |
| STANDARD OF REVIEW    | The court did not explicitly state a standard of review, but it reviewed the legal question of whether the court of appeals erred in dismissing the appeal. This is a question of law reviewed de novo. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                               |
| PARTIES               | State of Ohio v. Ramiro Ramirez                                                                                                                                                                         |

### TOPICS

criminal procedure double jeopardy evidence statutory interpretation appellate procedure

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the Double Jeopardy Clause of the United States and Ohio Constitutions prevents the state from appealing a trial court's order granting a new trial based on insufficient evidence.
2. Whether R.C. 2945.67 prevents the state from appealing such an order because it is a 'final verdict'.

## HOLDINGS

1. Neither the double-jeopardy protection nor R.C. 2945.67 prevents the state from appealing an order granting a new trial based on insufficient evidence. The double-jeopardy protection only prevents retrial, not an appeal, and an order granting a new trial is not a 'final verdict' under R.C. 2945.67.

## KEY QUOTATIONS

*“Neither the double-jeopardy protection nor R.C. 2945.67 prevents the state from appealing an order granting a new trial based on insufficient evidence.” (¶ 8)*

*“any ruling that the prosecution’s proof is insufficient to establish criminal liability for an offense” is functionally an acquittal for purposes of double jeopardy and prevents retrial.” (¶ 12)*

*“If a court grants a motion to acquit after the jury has convicted, there is no double jeopardy barrier to an appeal by the government from the court’s acquittal, because reversal would result in reinstatement of the jury verdict of guilt, not a new trial.” (¶ 15)*

## FACTUAL BACKGROUND

Ramirez was convicted of voluntary manslaughter for shooting and killing Delauter. After the jury verdict, the trial court granted Ramirez's motion for a new trial under Crim.R. 33(A)(4), finding that the evidence was insufficient to prove the passion and provocation elements of voluntary manslaughter. The state appealed, and the court of appeals dismissed the appeal on double jeopardy and statutory grounds.

## PROCEDURAL HISTORY

The trial court granted Ramirez's motion for a new trial under Crim.R. 33(A)(4) based on insufficient evidence. The state sought leave to appeal, and the court of appeals initially granted leave but later dismissed the appeal, holding that double jeopardy and R.C. 2945.67 barred the appeal. The state appealed to the Ohio Supreme Court.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

Remand to the court of appeals for further proceedings consistent with the opinion.

## CASES CITED

- Burks v. United States, 437 U.S. 1 (1978)
- Hudson v. Louisiana, 450 U.S. 40 (1981)
- Evans v. Michigan, 568 U.S. 313 (2013)
- Rutledge v. United States, 517 U.S. 292 (1996)
- State v. Keeton, 18 Ohio St.3d 379 (1985)
- State ex rel. Yates v. Montgomery Cty. Court of Appeals, 32 Ohio St.3d 30 (1987)
- State v. Matthews, 81 Ohio St.3d 375 (1998)
- State v. Rhodes, 63 Ohio St.3d 613 (1992)
- State v. Gustafson, 76 Ohio St.3d 425 (1996)
- New Prime, Inc. v. Oliveira, 139 S.Ct. 532 (2019)