Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOBBY, WARDEN *v.* BIES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 08–598. Argued April 27, 2009—Decided June 1, 2009

In *Atkins* v. *Virginia*, 536 U. S. 304, this Court held that the Eighth Amendment bars execution of mentally retarded offenders. Prior to *Atkins,* mental retardation merited consideration as a mitigating factor, but did not bar imposition of the death penalty. See *Penry* v. *Lynaugh*, 492 U. S. 302. Nearly a decade before *Atkins,* respondent Bies was tried and convicted in Ohio of the aggravated murder, kidnaping, and attempted rape of a ten-year-old boy. Instructed at the sentencing stage to weigh mitigating circumstances (including evidence of Bies' mild to borderline mental retardation) against aggravating factors (including the crime's brutality), the jury recommended a death sentence, which the trial court imposed. Ohio's Court of Appeals and Supreme Court affirmed the conviction and sentence, each concluding that Bies' mental retardation was entitled to "some weight" as a mitigating factor, but that the aggravating circumstances outweighed the mitigating circumstances. Bies then filed an unsuccessful petition for state postconviction relief, contending for the first time that the Eighth Amendment prohibits execution of a mentally retarded defendant. Soon after Bies sought federal habeas relief, this Court decided *Atkins.* The opinion left to the States the task of developing appropriate ways to determine when a person claiming mental retardation would fall within *Atkins*' compass. Ohio heeded *Atkins*' call in *State* v. *Lott.* The District Court then stayed Bies' federal habeas proceedings so that he could present an *Atkins* claim to the state postconviction court. Observing that Bies' mental retardation had not previously been established under the *Atkins-Lott* framework, the state court denied Bies' motion for summary judgment and ordered a full hearing on the *Atkins* claim. Rather than proceeding with that hearing, Bies returned to federal court, ar-

Syllabus

guing that the Double Jeopardy Clause barred the State from relitigating the mental retardation issue. The District Court granted the habeas petition, and the Sixth Circuit affirmed. Relying on *Ashe* v. *Swenson*, 397 U. S. 436, the Court of Appeals determined that all requirements for the issue preclusion component of the Double Jeopardy Clause were met in Bies' case. It concluded, *inter alia*, that the Ohio Supreme Court, on direct appeal, had decided the mental retardation issue under the same standard that court later adopted in *Lott*, and that the state court's recognition of Bies' mental state had been necessary to the death penalty judgment. When the Sixth Circuit denied the State's petition for rehearing en banc, a concurring judge offered an alternative basis for decision. He opined that, under *Sattazahn* v. *Pennsylvania*, 537 U. S. 101, jeopardy attaches once a capital defendant is "acquitted" based on findings establishing an entitlement to a life sentence; reasoning that the Ohio courts' mental retardation findings entitled Bies to a life sentence, he concluded that the Double Jeopardy Clause barred any renewed inquiry into Bies' mental state.

Held: The Double Jeopardy Clause does not bar the Ohio courts from conducting a full hearing on Bies' mental capacity. Pp. 7–11.

(a) The alternative basis for decision offered by the concurring opinion at the Sixth Circuit's rehearing stage is rejected. The State did not "twice put [Bies] in jeopardy," U. S. Const., Amdt. 5, in the core constitutional sense. *Sattazahn* offers Bies no aid, for there was no acquittal here. Bies' jury voted to impose the death penalty. At issue is his attempt to vacate that sentence, not an effort by the State to retry him or to increase his punishment. Nor did the state courts' mental retardation determinations entitle Bies to a life sentence. At the time of his sentencing and direct appeal, *Penry*, not *Atkins*, was the guiding decision, and the dispositive issue was whether the mitigating factors were outweighed by the aggravating circumstances beyond a reasonable doubt. Pp. 7–8.

(b) The issue preclusion doctrine, on which the Sixth Circuit panel primarily relied, does not bar a full airing of the issue whether Bies qualifies as mentally retarded under *Atkins* and *Lott*. The doctrine bars relitigation of issues actually determined and necessary to the ultimate outcome of a prior proceeding. Initially, it is not clear that the issue of Bies' mental retardation was actually determined under the *Lott* test at trial or on direct appeal. Nor did the State concede that Bies would succeed under *Atkins* and *Lott*, which had not then been decided. More fundamental, it is clear that the state courts' statements regarding Bies' mental capacity were not necessary to the judgments affirming his death sentence. Instead, those determinations cut against the ultimate outcome. In holding otherwise, the

Syllabus

Sixth Circuit conflated a determination necessary to the bottom-line judgment with a subsidiary finding that, standing alone, is not outcome determinative. The Sixth Circuit also erred in relying on *Ashe*'s statement: "[W]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." 397 U. S., at 443. Bies' case does not involve the kind of "ultimate fact" addressed in *Ashe*. There, the State was precluded from trying Ashe for robbing a poker player because he had already been acquitted of robbing a different player in the same poker game, and the acquittal was based on a determination that Ashe was not a participant in the poker game robbery. Bies, in contrast, was not acquitted, and determinations of his mental capacity were not necessary to the ultimate imposition of the death penalty. Moreover, even if the core issue preclusion requirements had been met, an exception to the doctrine's application would be warranted due to the intervening *Atkins* decision. Mental retardation as a mitigator and mental retardation under *Atkins* and *Lott* are discrete legal issues. One difference is that mental retardation, urged as a mitigating factor, may instead "enhance the likelihood that [a jury will find] the aggravating factor of future dangerousness." *Atkins* 536 U. S., at 521. This reality explains why prosecutors, pre-*Atkins*, had little incentive to contest retardation evidence. Because the change in law substantially altered the State's incentive to contest Bies' mental capacity, applying preclusion would not advance the equitable administration of the law. The federal courts' intervention in this case derailed the state-court proceeding. Recourse first to Ohio's courts is what this Court envisioned in remitting to the States responsibility for implementing *Atkins*. The State acknowledges that Bies is entitled to such recourse, but rightly seeks a full and fair opportunity to contest his plea under the *Atkins* and *Lott* precedents. Pp. 8–11.

519 F. 3d 324, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.