

Defendant Who Consents To Separate Trials Not Subject To Double Jeopardy

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After Michael Currier was indicted for burglary, grand larceny, and unlawful possession of a firearm by a convicted felon, he opted for separate trials, doing burglary and grand larceny first, unlawful possession second. He was concerned that his prior convictions for burglary and larceny, which would help prove the unlawful possession charge, would prejudice the jury's consideration of his current burglary and larceny charges. Currier was acquitted in the first trial, and he moved to stop the second trial on the basis that it would amount to double jeopardy. The trial court and Virginia's appellate courts denied relief, and he was convicted of the unlawful possession charge. On appeal, in a 5-4 decision resolving conflicts in other courts, Justice Gorsuch held that Currier's decision to split his charges into two trials did not implicate the prohibition against double jeopardy. Important to the majority's conclusion was Currier's consent to the split – had the charges been heard together, there would have been no issue. Four members of the majority went on to also agree that issues resolved in the first trial were not preclusive on the second trial. Justice Kennedy split from the majority on that – his concurrence noted that the majority's decision on the Double Jeopardy clause fully resolved the case without a need to go further. Justice Ginsburg, joined by Justices Breyer, Sotomayor, and Kagan, dissented, arguing that while the Double Jeopardy Clause did not preclude the second trial, Currier was entitled to issue preclusion for those issues resolved in the first trial. A link to the decision in *Currier v. Virginia* is [here](#).

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