

08-67 YEAGER V. UNITED STATES

DECISION BELOW:521 F.3d 367

LOWER COURT CASE NUMBER: 06-20321

QUESTIONS PRESENTED:

The courts of appeals are deeply divided as to whether, when conducting the Fifth Amendment collateral estoppel analysis set out by this court in *Ashe v. Swenson*, 397 U.S. 436 (1970), a court should consider the jury's failure to reach a verdict on some counts. The issue presented here is:

1. Whether, when a jury acquits a defendant on multiple counts but fails to reach a verdict on other counts that share a common element, and, after a complete review of the record, the court of appeals determines that the only rational basis for the acquittals is that an essential element of the hung counts was determined in the defendant's favor, collateral estoppel bars a retrial on the hung counts.

CERT. GRANTED 11/14/2008