

QUESTION 4

James Kirk was hunting in a rural area in the state of Pennsylvtuckey. He shot at what he thought was a deer. Unfortunately, it was a man in a deerskin coat, and the man died some days later from the wound Kirk caused. Kirk was prosecuted for negligent homicide and was convicted at trial. On appeal, the Pennsylvtuckey Court of Appeals reversed, holding that, as a matter of law, the shooting was a “mere misadventure” and could not be the basis for a homicide prosecution.

The local prosecutor drove by the scene of the crime a few days after the court of appeals’ decision was handed down. He noticed that Kirk had been hunting from a position only 50 feet from a farmhouse owned by someone other than the victim of the shooting. Accordingly, he has decided to prosecute Kirk for hunting within 400 feet of a dwelling house, a misdemeanor under Pennsylvtuckey law. The maximum penalty for hunting within 400 feet of a dwelling house is 10 months’ imprisonment and a \$500 fine, and a person so convicted may not obtain a hunting license for the next five years. The case has been assigned to Judge Spock, the same judge who tried the first negligent homicide case. Kirk has demanded a jury trial, and he has asked for court-appointed counsel. Judge Spock has ruled that Kirk will have neither. He stated that he would impose no more than six months’ imprisonment (in addition to a possible fine, and the five-year loss of hunting privileges). Kirk also asked the court to dismiss the case altogether on the claim that it is barred by the “federal double jeopardy provision.”

Assume that Kirk is otherwise qualified to have court-appointed counsel. If Kirk is convicted and receives the stated sentence, what are his chances for a reversal in the court of appeals based on the following arguments: (1) that he should have been given court-appointed counsel; (2) that he should have been given a jury trial or (3) at least, that the same judge who had previously tried him should not have been allowed to try his second case; and (4) that the second prosecution for the same hunting incident is barred by double jeopardy? Explain your answer.