

Four hours into a defendant's assault trial, the lawyers gathered in the judge's chambers to discuss an evidentiary issue. While there, the judge received a phone call from his wife telling him that her mother had suddenly died. Without asking the lawyers what they wanted to do, the judge brought the lawyers back into the courtroom, declared a mistrial, excused the jury, and rushed home to his wife.

A new jury was impaneled the next day before a second judge.

The defendant has objected to the second trial on double jeopardy grounds.

Would the second trial violate the prohibition against double jeopardy?

- A. No, because the first judge acted in good faith in declaring a mistrial.
- B. No, because the first trial did not produce a verdict.
- C. Yes, because the second judge's evidentiary rulings might be inconsistent with those of the first judge.
- D. Yes, because there was no manifest necessity for a mistrial.

Explanation:

No double jeopardy protections

(retrial permitted for same offense)

No attachment	Jury was not impaneled & sworn <i>or</i> Judge did not begin to hear evidence
Mistrial	Requested by defendant <i>or</i> Based on manifest necessity
Appeal	Appellate court discovered trial error & remanded case
New facts	Facts necessary for greater offense did not exist at first trial
Guilty plea to lesser offense	Greater offense was charged at time of plea to lesser offense

The Fifth Amendment **double jeopardy** clause bars multiple punishments and a second prosecution for the same offense following a conviction or an acquittal (ie, a final judgment). Since a mistrial terminates a trial prior to a final judgment, double jeopardy permits a **retrial** when (1) the defendant requested the mistrial or (2) the **mistrial** was **based on a manifest necessity**—ie:

an unforeseeable event made it **highly necessary to terminate** the proceedings (eg, the death of a juror) *and*

the judge exercised **sound and rational discretion** before declaring the mistrial (eg, allowing both sides the opportunity to speak, considering the available alternatives).

Here, the judge learned that his mother-in-law had suddenly died (unforeseeable event) and declared a mistrial. But the judge did so without considering other alternatives like postponing the trial or substituting another judge (no exercise of sound and rational discretion). As a result, there was no manifest necessity for the mistrial, and a second trial *would* violate the double jeopardy clause.

(Choice A) The judge acted in good faith since he declared the mistrial to tend to personal issues—not to prejudice the defendant. But since there was no manifest necessity for the mistrial, the defendant cannot be retried.

(Choice B) Although the first trial did not produce a verdict (since the judge declared a mistrial), double jeopardy prohibits a second prosecution because the mistrial was not based on a manifest necessity. If it had been, the second trial would have been permissible.

(Choice C) While the second judge's evidentiary rulings might be inconsistent with those of the first judge, the double jeopardy clause is violated due to the lack of a manifest necessity for the mistrial. Had the mistrial been based on a manifest necessity, a second trial before a

different judge would not have violated the double jeopardy clause despite the risk of inconsistent evidentiary rulings.

Educational objective:

Double jeopardy does not bar a second prosecution following a mistrial if the defendant requested the mistrial or it was based on a manifest necessity—(1) when an unforeseeable event made it highly necessary to end the proceedings and (2) the judge exercised sound and rational discretion before doing so.

References

U.S. Const. amend. V (prohibition against double jeopardy).

United States v. Perez, 22 U.S. 579, 580 (1824) (holding that a retrial is permitted when it is based on a manifest necessity).

United States v. Jorn, 400 U.S. 470, 486–87 (1971); Arizona v. Washington, 434 U.S. 497, 514–17 (1978) (explaining that a judge must exercise sound and rational discretion when determining whether manifest necessity exists).

Love v. Morton, 944 F.Supp. 379, 390–91 (D.N.J. 1996) (finding that there was no manifest necessity for a mistrial when the judge's mother-in-law died because he failed to exercise sound and rational discretion).

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