

On May 1, 2013, a car driven by a delivery man struck a pedestrian. On July 1, 2013, the delivery man pleaded guilty to reckless driving (a misdemeanor) and was sentenced to 30 days in jail and a fine of \$1,000. He served the sentence and paid the fine. On April 1, 2014, the pedestrian died as a result of the injuries she suffered in the accident. On March 1, 2017, a grand jury indicted the delivery man on a charge of manslaughter of the pedestrian. On May 15, 2017, trial had not begun and the delivery man filed a motion to dismiss the indictment on the ground of double jeopardy in that his conviction of reckless driving arose out of the same incident, and on the ground that the three-year statute of limitations for manslaughter had run.

How should the court rule on the delivery man's motion?

- A. Deny the motion on both grounds.
- B. Grant the motion only on double jeopardy grounds.
- C. Grant the motion only on statute of limitations grounds.
- D. Grant the motion on either double jeopardy grounds or statute of limitations grounds.

Explanation:

An indictment should be dismissed if it violates the Fifth Amendment **double jeopardy** clause, which generally prohibits multiple punishments or a second prosecution for the **same offense**—ie, when crimes have identical elements *or* all elements of one crime are also elements of the other. But a second prosecution is permitted if:

the defendant was convicted of a lesser offense at the first trial

the second trial involves a **greater offense**—ie, a more serious crime that includes all elements of the first crime—and

the **facts necessary** to establish the greater offense **did not exist** at the time of the first trial.

Here, the delivery man pled guilty to reckless driving (lesser offense) and was then indicted for manslaughter (greater offense). These crimes constitute the same offense since **manslaughter**—here, an unintentional killing of another during the commission of a misdemeanor—includes the elements of reckless driving. But since the pedestrian died *after* the man was convicted of reckless driving, the man could not have been prosecuted for manslaughter at the first trial. Therefore, the indictment does not violate double jeopardy **(Choices B & D)**.

An indictment should also be dismissed if the **statute of limitations**—a statutory time limit for prosecuting a defendant for a crime—has expired before a prosecution has commenced. A statute of limitations **starts to run** (ie, the time limit begins) once all the **elements of the crime have occurred**. This helps ensure that defendants can adequately defend themselves with evidence and facts that have not been obscured by the passage of time.

Here, the three-year statute of limitations for manslaughter began when the pedestrian died on April 1, 2014. Therefore, it would not expire until April 1, 2017. And since the delivery man was indicted for manslaughter on March 1, 2017—one month before the statute of limitations was set to expire—the indictment should not be dismissed on this basis **(Choices C & D)**.

Educational objective:

Double jeopardy does not prohibit a second prosecution for the same offense when (1) the defendant was convicted of a lesser offense at the first trial, (2) the second prosecution involves a greater offense, and (3) the facts necessary to prove that offense did not exist during the first trial. But the defendant must be indicted before the statute of limitations expires.

References

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

Diaz v. United States, 223 U.S. 442, 449 (1912) (holding that double jeopardy does not prevent a second prosecution for murder when victim was alive at the time of the first prosecution for assault and battery).

Toussie v. United States, 397 U.S. 112, 114–15 (1970) (explaining the significance of statute of limitations).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

