

A man kidnapped a victim in State A and transported the victim across the state border into State B. These actions violated the kidnapping laws of both states, which are identical. A jury convicted the man in a State A court, but the trial judge gave what prosecutors in State B deemed an unduly lenient sentence. The state prosecutor in State B then commenced a kidnapping case against the man for violating State B's kidnapping statute.

The man's lawyer has filed a motion in State B to dismiss the charge based on the double jeopardy protection against a second prosecution for the man's single act of kidnapping.

Should the court grant the motion to dismiss?

- A. No, because the double jeopardy protection only prohibits a second prosecution following an acquittal for the same offense.
- B. No, because the man's conduct violated the laws of two different states, and each has the right to enforce its laws.
- C. Yes, because the double jeopardy protection prohibits a second prosecution following a conviction for the same offense.
- D. Yes, because the government is collaterally estopped under the double jeopardy protection from prosecuting a defendant a second time for the same conduct that led to an earlier conviction.

Explanation:

The **Fifth Amendment double jeopardy clause** (applied to the states through the Fourteenth Amendment) protects a criminal defendant from undue harassment, embarrassment, and expense by **prohibiting** all of the following:

Multiple punishments for the same offense

Second prosecution for the same offense after a conviction (ie, judgment of guilt)

Second prosecution for the same offense after an acquittal (ie, judgment of not guilty)

Different sovereigns (ie, governments) may have **identical criminal statutes**. But under the **dual sovereignty doctrine**, those statutes are considered **distinct offenses** because each sovereign derives its power from a different source (eg, its own state constitution). Therefore, different sovereigns can prosecute a defendant for the **same criminal act** without violating the double jeopardy clause.

Here, State A convicted the man for violating its kidnapping law. State B then sought to prosecute him for the same kidnapping act under State B's kidnapping law. Although the kidnapping laws of both states are identical, each law constitutes a distinct offense because State A and State B are separate sovereigns. Therefore, State B can prosecute the man for kidnapping without violating the double jeopardy clause, and the court should deny his motion to dismiss the charge **(Choice C)**.

(Choice A) Double jeopardy prohibits a second prosecution following an acquittal *or* a conviction for the *same* offense. And though the man was convicted (not acquitted) of kidnapping in State A, he can still be prosecuted for that same criminal act under State B's kidnapping statute (a *distinct* offense under the dual sovereignty doctrine).

(Choice D) Double jeopardy embodies the doctrine of collateral estoppel (ie, issue preclusion), which prevents the relitigation of any issue of ultimate fact that has already been determined by a prior final judgment. However, this doctrine does not apply to successive prosecutions for the same criminal act by different sovereigns (as seen here).

Educational objective:

The dual sovereignty doctrine allows different sovereigns to prosecute a defendant for the same criminal act without violating the Fifth Amendment double jeopardy clause.

References

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

Heath v. Alabama, 474 U.S. 82, 88 (1985) ("[S]uccessive prosecutions by two States for the same conduct are not barred by the Double Jeopardy Clause.").

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Dual sovereignty doctrine

(prosecution under identical statutes permitted in State A, State B & federal courts)

