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).

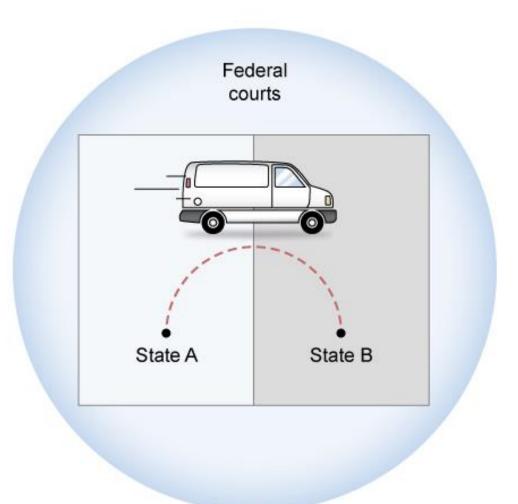
Heath v. Alabama, 474 U.S. 82, 88 (1985) ("[S]uccessive prosecutions by two States for the same conduct are not barred by the Double Jeopardy Clause.").

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## **Dual sovereignty doctrine**

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



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