

Double jeopardy

Business



The double jeopardy clause is in the Fifth Amendment of the United States constitution. It prohibits the government from putting an individual on trial more than once for a single offence committed in any State. It also bars the government from imposing more than one form of punishment more than once for the same offence committed. It states that no person shall be put or subjected twice to life imprisonment or the removal of limb for the same offence and that is why most state constitutions also guarantee this mode of right to all the defendants who appear in the state court (Gibson & Watkins, 2004).

The double jeopardy clause is practiced by the States that do not expressly guarantee this same right in their laws because the Fifth Amendment was made applicable to all state proceedings through the introduction of Doctrine of incorporation. This clause applies only to criminal acts and it consists of three separate constitutional protections. The first one includes the protection against a second criminal prosecution carried out for the same offense after a court has acquitted the defendant. Secondly, the protection comes to prevent a second subsequent prosecution for the same crime after the accused is convicted. The last protection is against multiple punishments given for the same offense (Gibson & Watkins, 2004). Thus double jeopardy must still be afforded to all criminal defendants in the U.

S. on the contrary there are some cases that the double jeopardy law may not apply and this will be discussed in the paper with regards to murder. Despite being applicable to both States and Federal Government since its ratification in the year 1791 and the ruling to prohibit multiple prosecutions for the same conduct made by the U. S. Supreme Court in 1937, the

defendant accused of murder may face multiple trials for the same offence in a number of ways (Gibson & Watkins, 2004). The first instance is if the prosecution case ended in a mistrial. The mistrial in this case could be as a result of many things which include a situation when the jury was unable to reach a decision regarding the murder case, or when the prosecutor or defendant brings in new evidence about the murder. This will make the ruling made by the court inadmissible. In such a situation there will occur a second trial despite the Fifth Amendment's Double Jeopardy clause.

Despite this clause under the Fifth Amendment, a citizen guilty of murder may be charged, convicted or punished for separate crimes that resulted to the murder. Thus, if a person standing in Indiana shoots somebody in Illinois, he will have violated both Indiana and Illinois law. He may face trial in both states thus the double jeopardy may not apply. The same action conducted may violate different federal and state laws like a case about Rodney King when police officers who beat him were found not guilty but when the officers were tried in federal court for violating King's civil rights, all the officers were found guilty and some served prison time. In this case the person may have performed the same act but there exists different exceptions in the law.

This therefore provides that different jurisdictions are allowed to charge the same individual twice with murder based on the same facts without violating double jeopardy clause (Gibson & Watkins, 2004). The federal and the state governments can charge the individual of the same murder because the crime violated the federal and the state law. On the contrary, double jeopardy may rise when a pretrial motion was raised to dismiss

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murder charges against the individual. Here the motion raised will ask the judge to apply the same element test which will examine all the elements of the earlier prosecution of murder in relation to the current trial. When the judge finds that all the cases on murder are the same, the new charges against which the murder case was built, will be dismissed (Gibson & Watkins, 2004). Double Jeopardy clause does not apply in a case when there is an appeal.

In this case, a new prosecution can be permitted when the murder trial is reversed on appeal. The defendant may be reconvicted in such a case and the court can give a higher sentence at the second trial. When the jury finds the defendant not guilty, the case may not be appealed by the prosecutor since a second prosecution is barred. These rules about double jeopardy are more complex when the judge decides the ruling and not the jury (Gibson & Watkins, 2004). In a more general sense, when the dismissal or acquittal is made by judge, the re-prosecution for the same offence is barred. On the other hand, if there is a request of dismissal by the defendant because it was for a reason that would help prevents his prosecution, the prosecutor is allowed to appeal and when reversed, the defendant is going to be prosecuted again.