

Question MEE 5 – February 2024 – Selected Answer 1

Applicable Law:

Under the 5th Amendment to the US Constitution, applicable to states via the Fourteenth Amendment, no citizen may be subject to double jeopardy for the same crime. Double jeopardy attaches once a jury is sworn in in a jury trial, or once a judge begins to hear witnesses in a bench trial. Two crimes will constitute the "same offense" for double jeopardy purposes unless both of the crimes require proof of an element which the other crime does not. Under the "separate sovereign" doctrine, double jeopardy does not apply when the defendant is charged by two separate sovereigns, even when the charged crimes include the same elements.

Here, the officer has already been convicted under the city ordinance, so double jeopardy will have already attached if its applicable.

1. State B hate-crime:

The issue is whether the officer's conviction under the city ordinance bars the State B criminal charge under double jeopardy principles.

Although State B's hate crime statute makes illegal the exact same conduct as the State A city's ordinance (the elements are the same), the separate sovereign doctrine applies here. State B may charge the officer in its own courts for the same crime despite the officer's conviction under the city ordinance. The State B court has jurisdiction because part of the officer's act and the injury to the driver occurred in State B. Because it is a separate sovereign and it has jurisdiction over the case, the State B action is not barred by double jeopardy even though the crimes include the same elements.

2. Federal hate-crime:

The federal hate crime prosecution is not barred under double jeopardy.

The federal statute is specifically directed toward persons "acting under color of state or local law." Although this is an element not included in the city ordinance, the other element (assault of another based on religious expression) is identical to the city ordinance. Here, the separate sovereign doctrine applies: the defendant may be subject to prosecution by separate sovereigns for the same offense or even after conviction for a lesser included offense. Because the defendant violated the federal statute as well as the city ordinance, and he is being charged by separate sovereigns (federal and state), double jeopardy principles do not bar this charge.

3. State A hate-crime:

The State A hate-crime charge is barred under double jeopardy. Here, there are no separate sovereigns at play because the City is located in State A, so the municipal

court is within the same State judicial system as the prosecutor bringing the State A charges.

Here, the issue is whether both crimes include separate elements the other does not. The State-level hate crime statute requires (1) a person assaults another (2) because of that person's religious expression, and (3) thereby causes injury. In contrast, the city ordinance requires only (1) assault (2) because of another person's religious expression. Here, double jeopardy principles apply because, while the state-level statute requires an extra element, the city ordinance does not. Therefore, these are considered "the same offense" for double jeopardy purposes, and the State A hate crime prosecution is barred by the Constitution.

4. State A assault:

The State A assault charge is not barred, because it and the city ordinance both require proof of separate elements. The state-level assault statute requires that someone (1) assaults another person (2) with intent to cause injury. The city ordinance requires (1) assault of another person (2) because of that person's religious expression. Therefore, the assault statute requires a separate element (intent to cause injury) and the city ordinance requires a separate element (motivated by religious expression) that the other crime does not. As a result, the State A assault prosecution is not barred by the double jeopardy clause.

Question MEE 5 – February 2024 – Selected Answer 2

Under the United State Constitution's double jeopardy clause, a defendant may not be convicted of the same crime more than once. Under the Blockberger test, a defendant cannot be convicted of two crimes unless each crime contains an element that the other does not.

Here, the officer pleaded guilty to and was convicted of a City (located in State A) ordinance which provides that "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable by up to six months in jail."

1. The issue is whether the State B hate-crime prosecution is barred by the United State Constitution's double jeopardy clause.

When a crime occurs in two or more states, each state may bring charges for, and convict a person of, the same crime. This will not constitute double jeopardy under the U.S. Constitution.

State B's hate-crime statute provides that "any person who assaults another person because of that person's religious expression" commits a felony punishable by one to two years in prison.

Here, the officer's crimes occurred in both State A and State B. The crime began in State A when the officer made the disparaging remarks about the religious bumper sticker, picked up the rock, and threatened the driver. The assault began in State A because that is where the officer first placed the driver under the fear of imminent bodily harm.

The assault continued into State B when the officer urged the driver to run, unless he be struck by the rock that the officer was holding. The driver then ran across the border to State B, where he was struck by the rock.

Therefore, State B's hate-crime prosecution is not barred by the U.S. Constitution's double jeopardy clause.

2. The issue is whether the federal hate-crime prosecution is barred by the United State Constitution's double jeopardy clause.

A conviction of the same crime under state and federal law does not violate the double jeopardy clause.

The federal district of State A's hate-crime statute provides that "any person acting *under color of state or local law* to assault another person because of that person's religious expression" commits a felony punishable by not more than two years.

The officer's original conviction was under state law. Therefore, the federal hate-crime prosecution is not barred by the U.S. Constitution's double jeopardy clause.

3. The issue is whether the State A hate-crime prosecution is barred by the United State Constitution's double jeopardy clause.

State A's hate-crime statute provides that "any person who *assaults another person because of that person's religious expression* and thereby *causes injury* to that person commits a felony punishable by one to five years in prison."

City is located within State A. State A's hate-crime statute includes an additional element that the City's hate-crime ordinance does not-- injury. However, City's hate crime statute does not contain a different element than State A's hate-crime statute. Therefore, State A's hate-crime statute cannot pass the Blockberger test and is barred by the United State Constitution's double jeopardy clause.

4. The issue is whether the State A assault prosecution is barred by the United State Constitution's double jeopardy clause.

State A's assault statute provides that "any person who assaults another person with the *intent to cause injury*" is guilty of a felony punishable by not more than two years in prison.

City's statute provides that "any person who assaults another person *because of that person's religious expression* commits a serious misdemeanor punishable by up to six months in jail."

Here, the crimes each contain an element that the other does not-- "intent to cause injury" and perpetration "because of that person's religious expression." Therefore, the State A assault prosecution is not barred by the U.S. Constitution's double jeopardy clause.

Question MEE 5 – February 2024 – Selected Answer 3

Background Double Jeopardy Clause Rules

The Double Jeopardy Clause of the United States Constitution prevents the same individual from being tried and/or convicted for the same crime more than once. To define what constitutes the same crime, the Supreme Court has adopted the Blockburger test which instructs that two charges are not the same crime so long as each crime requires at least one additional element that the other crime does not. It does not matter if one crime is classified as a misdemeanor and the other is classified as a felony: if they each do not require an element that the other does not, they are the same crime for purposes of double jeopardy. Accordingly, the same facts may give rise to multiple charges without running afoul of double jeopardy so long as each charge requires one element that the other charge did not. However, the Double Jeopardy Clause does not prohibit charges for the same crime brought by separate sovereigns. If there are separate sovereigns, a charge that would otherwise be duplicative of a charge brought by one state can still be brought by either a different state or by the Federal Government.

Finally, the Double Jeopardy Clause does not automatically attach just because someone has been charged with a crime. Jeopardy attaches in a criminal case when the jury is empaneled. Jeopardy will also attach to a guilty plea.

Here, the officer has pled guilty to violating a city ordinance of a city located in State A. In particular, the city ordinance requires two elements: the defendant (1) assaulted

another person (2) because of that person's religious expression. Thus, to evaluate whether double jeopardy will attach, one must look at whether the charges are the same crimes and whether a different sovereign is involved.

[1] State B Hate-Crime Prosecution

No, the State B hate-crime prosecution is not barred by the United States Constitution's Double Jeopardy Clause. At issue is whether a state is properly considered a separate sovereign.

First, State B has standing to bring this case because the criminal harm occurred in State B even though the interaction began in State A. The specific elements of State B's hate crime are identical to the city: (1) assault on another person (2) because of that person's religious expression. However, even though these elements are identical, the prosecution will not be barred by double jeopardy because a state is considered a separate sovereign for purposes of double jeopardy (see background discussion above). State B is a separate sovereign from State A, which is where the city ordinance conviction occurred.

Thus, the State B hate-crime prosecution will not be barred by the United States Constitution's Double Jeopardy Clause.

[2] Federal Hate-Crime Prosecution

No, the federal hate-crime prosecution will not be barred. At issue is whether the Federal Government qualifies as a separate sovereign.

Here, the federal criminal charge requires (1) assault on another person (2) because of that person's religious beliefs and (3) the defendant acts under color of state or local law. Here, the federal crime does include an element that the city ordinance does not, but this does not satisfy the Blockburger test because the city ordinance does not have an element that the federal charge does not require. However, even though these two charges would qualify as the same crime under Blockburger, the federal prosecution will not be barred because the federal government is considered a separate sovereign from State A, even though it is the United States Attorney for the federal District of State A who filed the charge (see background discussion above).

Thus, the federal hate-crime prosecution will not be barred by the United States Constitution's Double Jeopardy Clause.

[3] State A Hate-Crime Prosecution

Yes, the State A hate-crime prosecution will be barred by the United States Constitution's Double Jeopardy Clause. At issue is whether the state hate-crime

statute is the same as the city ordinance and whether State A is the same sovereign as the city.

First, the State A hate-crime statute requires the following elements: (1) assault on another person (2) because of that person's religious expression and (3) such action causes injury. Here, the state statute does require an additional third element not included in the city ordinance. However, this is only half of the test; the city ordinance must also have an element not included within the state statute to evade application of the Double Jeopardy Clause. Because the city ordinance does not have such additional element, these two charges will be considered the same crime for double jeopardy purposes (see background discussion above).

Second, the city ordinance was charged by City, a city of State A. For purposes of double jeopardy, a city and the state in which that city is located are considered the same sovereign. Thus, because the statutes fail the Blockburger test and there is no separate sovereign involved, the State A hate-crime prosecution will be barred by the Double Jeopardy Clause.

[4] State A Assault Prosecution

No, the State A assault prosecution will not be barred by the United States Constitution's Double Jeopardy Clause. At issue is whether the assault prosecution and the city ordinance should be considered the same crime.

As mentioned above (see background section above), the Supreme Court established the Blockburger test to determine when two statutes comprise the same crime for double jeopardy purposes. The city ordinance included two elements: (1) an assault on another person and (2) because of that person's religious expression. The assault statute includes two elements: (1) an assault on another person and (2) intent to cause injury. In this case, these two ordinances are not the same crime: the city ordinance requires proof that the assault was caused because of the victim's religious expression while the state assault statute requires the intent to cause injury. Accordingly, these two statutes are not the same crime, so State A will not be barred from bringing prosecution on the assault charge.