

DOUBLE JEOPARDY!

Joseph L. Hyde, Assistant Professor



1

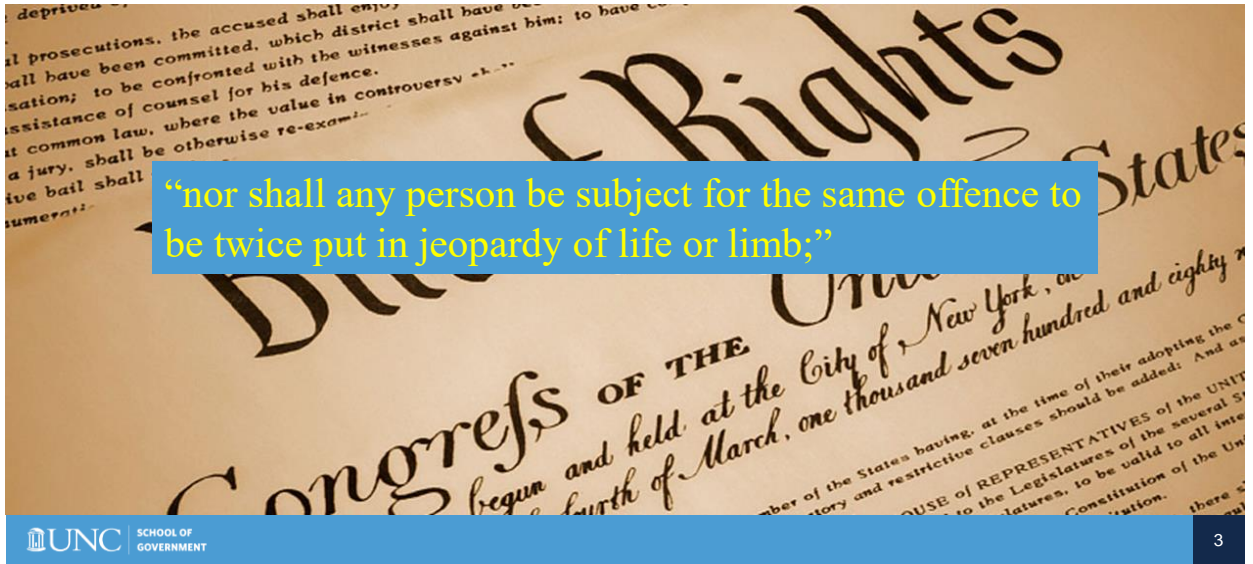
A map of North Carolina is shown in the background. Overlaid on the map is the word 'Roadmap' in a large, bold, dark blue font. Below it is a list of five items, each preceded by a Roman numeral: I. Sources, II. Same offense, III. Prior acquittal, IV. Prior conviction, and V. Multiple punishments. The text is in a black serif font. At the bottom left of the map area is the UNC School of Government logo, and at the bottom right is a small black square containing the number '2' in white.

Roadmap

- I. Sources
- II. Same offense
- III. Prior acquittal
- IV. Prior conviction
- V. Multiple punishments

2

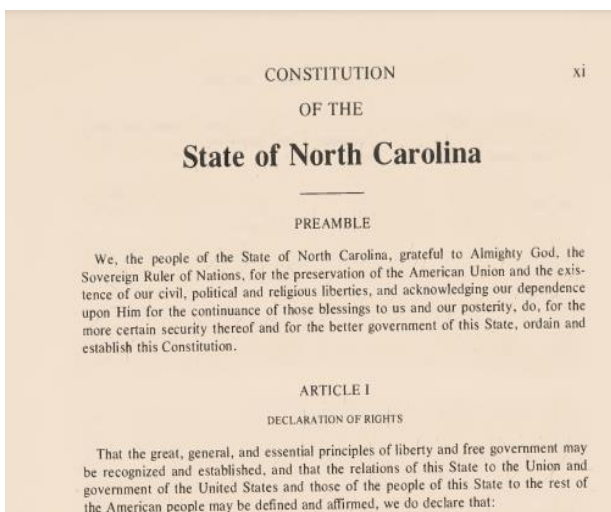
The Fifth Amendment to the United States Constitution



3

3

What Provision of the North Carolina Constitution?



It is a fundamental and sacred principle of the common law, deeply imbedded in our criminal jurisprudence, that no person can be twice put in jeopardy of life or limb for the same offense. . . .

While the principle is not stated in express terms in the North Carolina Constitution, it has been regarded as an integral part of the 'law of the land' [clause, Art. I, § 19].

4

4

Proceedings to Which Double Jeopardy is Applicable:

Subsequent criminal prosecution may be barred by prior:

- criminal prosecution, or
- civil sanction deemed criminal
 - juvenile adjudication



Subsequent criminal prosecution is NOT barred by prior:

- Probation revocation proceeding;
- Thirty-day pretrial driving license revocation;
- One-year commercial driver's license disqualification;
- Assessment of drug tax by N.C. Dept of Revenue;
- ABC Commission administrative action.

Attachment of Jeopardy

- For jury trials, jeopardy attaches when jury is empaneled and sworn.
- For bench trial, jeopardy attaches when court begins to hear evidence.
- For guilty plea, jeopardy attaches upon court's acceptance of the guilty plea.*

Termination of Jeopardy

- Jeopardy is terminated by an acquittal.
- Jeopardy may be terminated by a conviction.*
- Jeopardy is "continuing" when: (1) defendant appeals for trial de novo, or (2) trial ends without a verdict.

Double Jeopardy Provisions Protect Against:



- Second prosecution for the same offense after acquittal;
- Second prosecution for the same offense after conviction;
- Multiple punishments for the same offense.

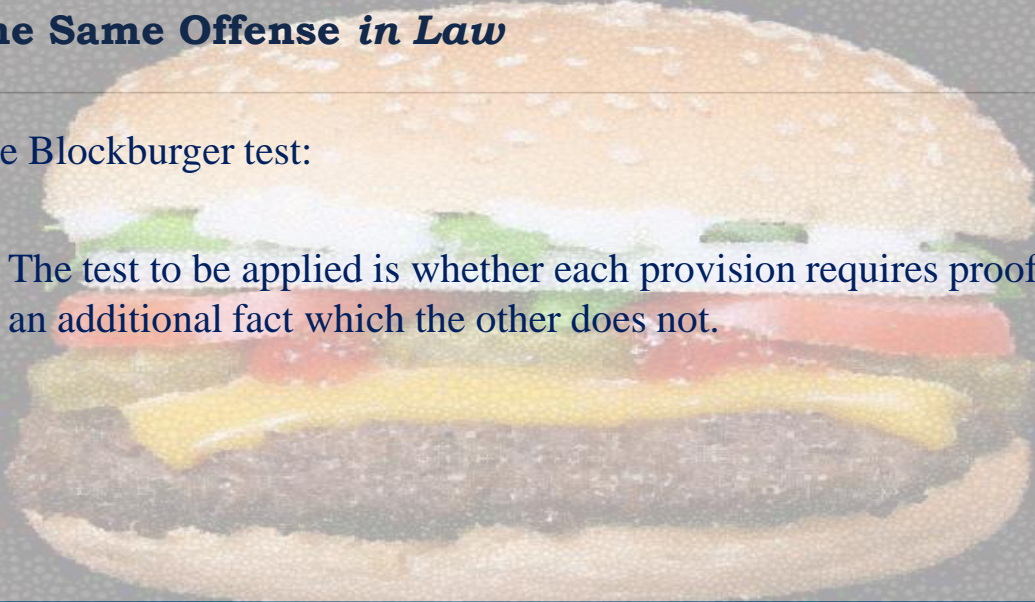
What constitutes the same offense for double jeopardy?

<p>What constitutes an offense?</p> <ul style="list-style-type: none"> • Includes all crimes; • Criminal contempt after plenary hearing; and • Infractions. 	<p>When are offenses the same?</p> <ul style="list-style-type: none"> • For a plea of former jeopardy to be good, it must be grounded on the 'same offense' both in law and in fact.
--	---

The Same Offense *in Law*

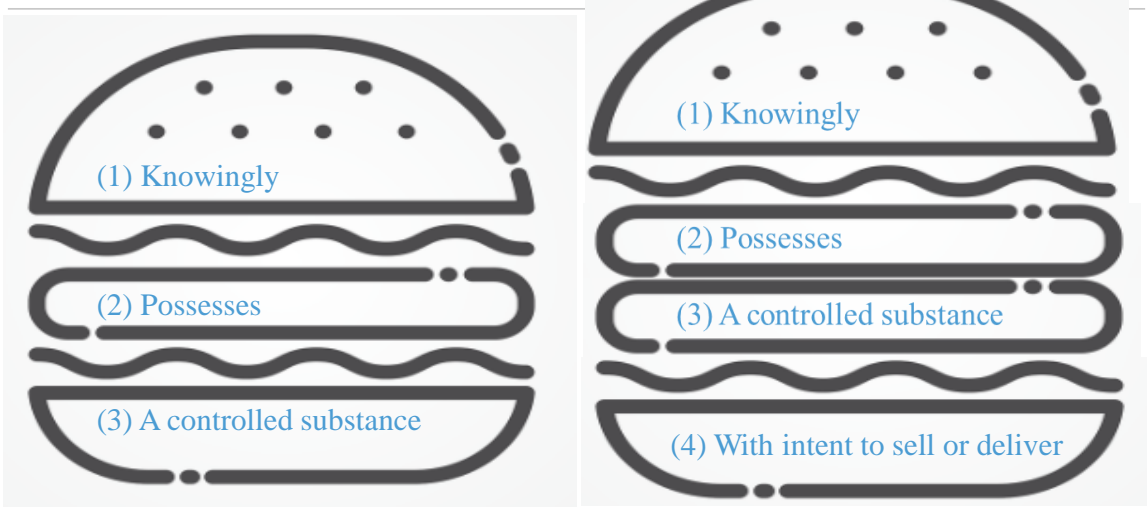
The Blockburger test:

The test to be applied is whether each provision requires proof of an additional fact which the other does not.



9

The Same Offense *in Law*: possession of a controlled substance



10

The Same Offense *in Fact*

The 'same evidence' test asks two questions:

- (1) Whether the facts alleged in the second indictment would have sustained a conviction under the first indictment; and
- (2) Whether the same evidence would support a conviction in each case.

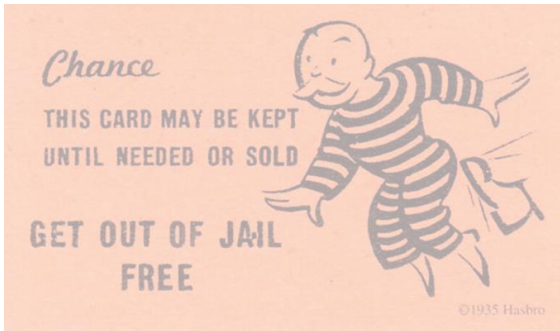
11

The Same Offense *in Fact*: discharging a firearm into occupied property

- Indictment alleges that defendant discharged a firearm, a handgun, into a vehicle owned by John Doe, while it was occupied by John Doe.
- Evidence shows that defendant's first shot sent bullet through the front windshield of the vehicle.
- Indictment alleges that defendant discharged a firearm, a handgun, into a vehicle owned by John Doe, while it was occupied by John Doe.
- Evidence shows that defendant's second shot sent bullet into the passenger side door of the vehicle.

12

A Prior Acquittal



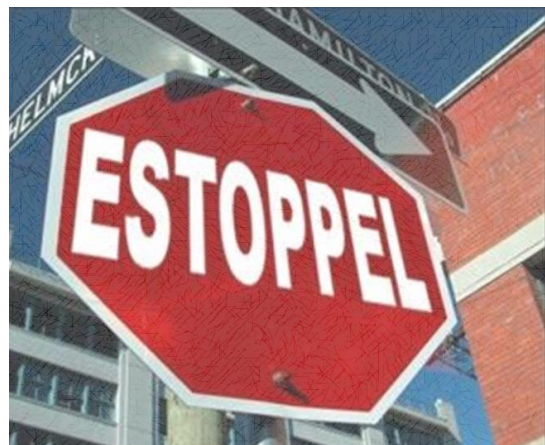
Prior Acquittal Includes:

- A verdict of not guilty;
- Dismissal for insufficient evidence;
- Collateral estoppel.

Collateral Estoppel

Issue preclusion bars successive litigation of an issue of fact or law previously determined by a valid and final judgment.

- May bar State from relitigating issue previously decided in defendant's favor.
- Does not preclude the admission of evidence at a subsequent trial.



Midtrial Dismissal or Mistrial

If a charge is dismissed after jeopardy attaches, retrial is generally barred.

But . . .

- Defective pleading
- Fatal variance
- Other dismissal upon defendant's motion not based on grounds of factual guilt or innocence.

When a mistrial is declared, whether double jeopardy prevents retrial depends upon:

- Which party sought a declaration of mistrial; and
- Whether there was "manifest necessity" to declare a mistrial.

ATTENTION
DANGER

15

A Prior Conviction

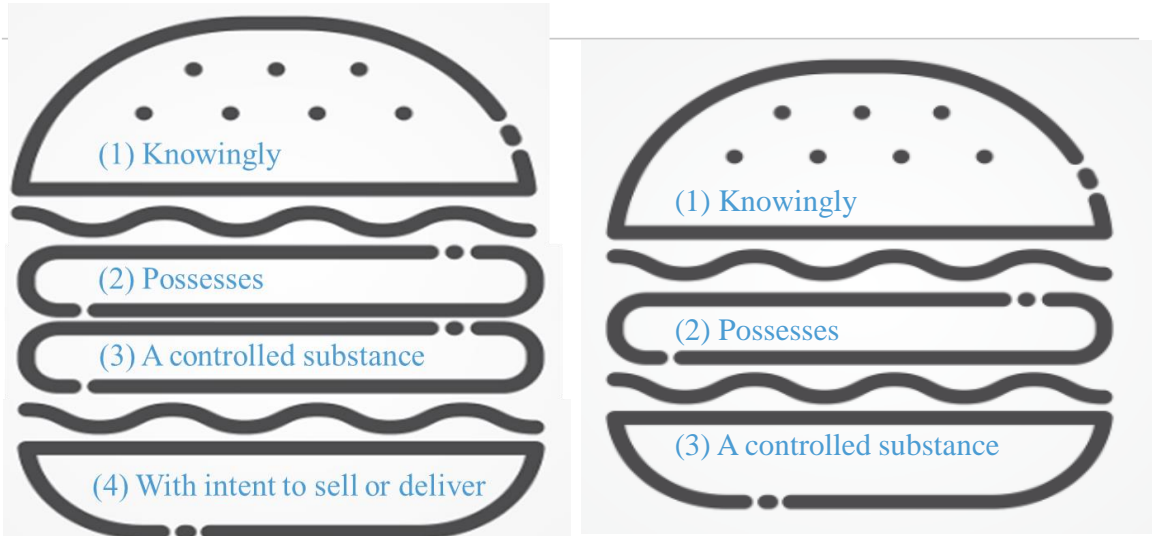
Prior conviction includes:

- Plea of guilty or no contest;
- Verdict of guilty at trial;
- PJC with conditions.



16

When is a Conviction an Implicit Acquittal?



Appeal by Defendant Generally Waives Protection



Defendant waives protection against double jeopardy when a verdict or judgment is set aside at his own instance on motion in the lower court or upon appeal.

- **EXCEPT** when conviction is overturned for insufficiency of the evidence.
- Appeal from conviction for lesser-included does not waive protection from retrial on greater offense.

Single Trial v. Multiple Trials

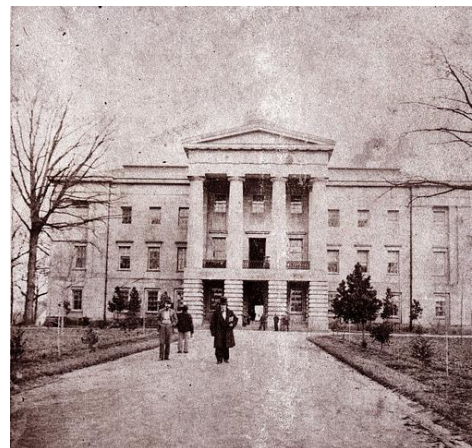
With respect to multiple sentences imposed in a single trial, . . .



- the Double Jeopardy clause does no more than prevent the court from prescribing greater punishments than the legislature intended.
- Even if the Blockburger test is satisfied, the defendant may be punished for both crimes if it is found that the legislature so intended.

Determining Legislative Intent

- The traditional means of determining the intent of the legislature include the examination of the subject, language, and history of the statutes.
- Multiple punishments are permissible for:
 - Breaking or entering and larceny pursuant to breaking or entering;
 - Trafficking in cocaine by possession and felony possession of cocaine;
 - Second-degree rape and statutory rape.



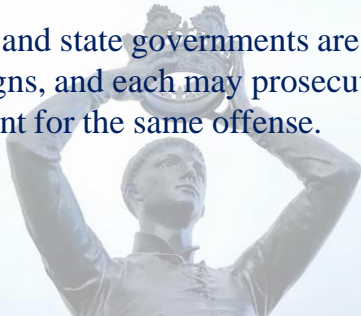
Arrest of Judgment

- Motion in arrest of judgment is proper when it is apparent that no judgment against the defendant could lawfully be entered.
- Judgment may also be arrested to avoid double jeopardy problem arising out of multiple punishment for the same offense.



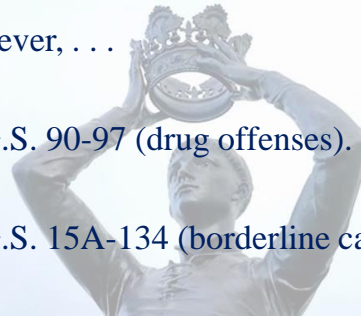
Separate Sovereigns

Federal and state governments are separate sovereigns, and each may prosecute a defendant for the same offense.



However, . . .

- G.S. 90-97 (drug offenses).
- G.S. 15A-134 (borderline cases).



Joinder & Severance



A defendant who has been tried for one offense may move to dismiss a joinable offense.

The motion to dismiss must be granted unless:

- Motion for joinder was previously denied;
- The court finds the right has been waived; or
- The court finds the ends of justice would be defeated if the motion were granted.

G.S. 15A-926(c)(2)

Recapitulation

- I. Sources
- II. Same offense
- III. Prior acquittal
- IV. Prior conviction
- V. Multiple punishments

Joseph L. Hyde
Assistant Professor
919-966-4117
jhyde@sog.unc.edu

