



HEATH v. ALABAMA
SUPREME COURT OF THE UNITED STATES
474 U.S. 82
December 3, 1985
[7 – 2]

OPINION: O'CONNOR/BURGER/WHITE/BLACKMUN/POWELL/REHNQUIST/STEVENS
...The question before the Court is whether the Double Jeopardy Clause of the Fifth Amendment bars **Alabama** from trying petitioner for the capital offense of murder during a kidnapping after **Georgia** has convicted him of murder based on the same homicide. In particular, this case presents the issue of the applicability of the dual sovereignty doctrine to successive prosecutions by two States.

In August 1981, petitioner, Larry Gene Heath, hired Charles Owens and Gregory Lumpkin to kill his wife, Rebecca Heath, who was then nine months pregnant, for a sum of \$2,000. On the morning of August 31, 1981, petitioner left the Heath residence in Russell County, Alabama, to meet with Owens and Lumpkin in Georgia, just over the Alabama border from the Heath home. Petitioner led them back to the Heath residence, gave them the keys to the Heaths' car and house,

and left the premises in his girlfriend's truck. Owens and Lumpkin then kidnapped Rebecca Heath from her home. The Heath car, with Rebecca Heath's body inside, was later found on the side of a road in Troup County, Georgia. The cause of death was a gunshot wound in the head. The estimated time of death and the distance from the Heath residence to the spot where Rebecca Heath's body was found are consistent with the theory that the murder took place in Georgia, and respondent does not contend otherwise.

Georgia and Alabama authorities pursued dual investigations in which they cooperated to some extent. On September 4, 1981, petitioner was arrested by Georgia authorities. Petitioner waived his Miranda rights and gave a full confession admitting that he had arranged his wife's kidnapping and murder. In November 1981, the grand jury of Troup County, Georgia, indicted petitioner for the offense of "malice" murder...Georgia then served petitioner with notice of its intention to seek the death penalty, citing as the aggravating circumstance the fact that the murder was "caused and directed" by petitioner. On February 10, 1982, petitioner pleaded guilty to the Georgia murder charge in exchange for a sentence of life imprisonment, which he understood could involve his serving as few as seven years in prison.

On May 5, 1982, the grand jury of Russell County, Alabama, returned an indictment against petitioner for the capital offense of murder during a kidnaping. Before trial on this indictment, petitioner entered [a] plea of...former jeopardy under the Alabama and United States Constitutions, arguing that his conviction and sentence in Georgia barred his prosecution in Alabama for the same conduct. Petitioner also entered a plea contesting the jurisdiction of the Alabama court on the ground that the crime had occurred in Georgia.

After a hearing, the trial court rejected petitioner's double jeopardy claims. It assumed...that the two prosecutions could not have been brought in succession by one State but held that double jeopardy did not bar successive prosecutions by two different States for the same act. The court postponed a ruling on petitioner's plea to jurisdiction until the close of the State's case in chief.

At the close of the State's case, petitioner argued that Alabama did not have jurisdiction under state law because there had been no evidence of kidnaping and all the evidence showed that Rebecca Heath was killed in Georgia. The State responded that a kidnaping had been proved, and that under Ala.Code §15-2-3 (1982), if a crime commences in Alabama it may be punished in Alabama regardless of where the crime is consummated. The court rejected both petitioner's jurisdictional plea and his renewed double jeopardy claims.

On January 12, 1983, the Alabama jury convicted petitioner of murder during a kidnaping in the first degree...[and] recommended the death penalty...The judge accepted the jury's recommendation, finding that the sole aggravating factor, that the capital offense was "committed while the defendant was engaged in the commission of a kidnaping," outweighed the sole mitigating factor, that the "defendant was convicted of the murder of Rebecca Heath in the Superior Court of Troup County, Georgia,...and received a sentence of life imprisonment in that court."

On appeal, the Alabama Court of Criminal Appeals rejected petitioner's plea of...former jeopardy under the Alabama and United States Constitutions and affirmed his conviction. Petitioner then filed a writ of certiorari with the Alabama Supreme Court, stating the sole issue to

be "whether or not the prosecution in the State of Alabama constituted double jeopardy in violation of the 5th Amendment of the United States Constitution." The court granted his petition, and unanimously affirmed his conviction.

The Alabama Supreme Court noted that "prosecutions under the laws of separate sovereigns do not improperly subject an accused twice to prosecutions for the same offense," citing this Court's cases applying the dual sovereignty doctrine. The court acknowledged that this Court has not considered the applicability of the dual sovereignty doctrine to successive prosecutions by different States. It reasoned, however, that "if, for double jeopardy purposes, Alabama is considered to be a sovereign entity vis-a-vis the federal government then surely it is a sovereign entity vis-a-vis the State of Georgia."

Petitioner sought a writ of certiorari from this Court, raising double jeopardy claims and claims based on Alabama's exercise of jurisdiction...We granted certiorari limited to the question whether petitioner's Alabama conviction was barred by this Court's decision in *Brown v. Ohio* and requested the parties to address the question of the applicability of the dual sovereignty doctrine to successive prosecutions by two States. For the reasons explained below, we affirm the judgment of the Alabama Supreme Court...

Successive prosecutions are barred by the Fifth Amendment only if the two offenses for which the defendant is prosecuted are the "same" for double jeopardy purposes. Respondent does not contravene petitioner's contention that the offenses of "murder during a kidnapping" and "malice murder," as construed by the courts of Alabama and Georgia respectively, may be considered greater and lesser offenses and, thus, the "same" offense under *Brown v. Ohio*, absent operation of the dual sovereignty principle. We therefore assume...that, had these offenses arisen under the laws of one State and had petitioner been separately prosecuted for both offenses in that State, the second conviction would have been barred by the Double Jeopardy Clause.

The sole remaining question upon which we granted certiorari is whether the dual sovereignty doctrine permits successive prosecutions under the laws of different States which otherwise would be held to "subject [the defendant] for the same offence to be twice put in jeopardy." Although we have not previously so held, we believe the answer to this query is inescapable. The dual sovereignty doctrine, as originally articulated and consistently applied by this Court, compels the conclusion that **successive prosecutions by two States for the same conduct are not barred by the Double Jeopardy Clause.**

The dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of the government. **When a defendant in a single act violates the "peace and dignity" of two sovereigns by breaking the laws of each, he has committed two distinct "offences."** *United States v. Lanza*¹. As the Court explained in *Moore v. Illinois*, "an offence, in its legal signification, means the transgression of a law." Consequently, when the same act transgresses the laws of two sovereigns, "it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable."

¹ Case 5A-DJ-1 on this website.

In applying the dual sovereignty doctrine, then, the crucial determination is whether the two entities that seek successively to prosecute a defendant for the same course of conduct can be termed separate sovereigns. This determination turns on whether the two entities draw their authority to punish the offender from distinct sources of power. Thus, the Court has uniformly held that the States are separate sovereigns with respect to the Federal Government because each State's power to prosecute is derived from its own "inherent sovereignty," not from the Federal Government. As stated in *Lanza*:

"Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other.

"It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each."

The States are no less sovereign with respect to each other than they are with respect to the Federal Government. Their powers to undertake criminal prosecutions derive from separate and independent sources of power and authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment. The States are equal to each other "in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself." *Coyle v. Oklahoma*. Thus, "each has the power, inherent in any sovereign, independently to determine what shall be an offense against its authority and to punish such offenses, and in doing so each 'is exercising its own sovereignty, not that of the other.'"

The cases in which the Court has applied the dual sovereignty principle outside the realm of successive federal and state prosecutions illustrate the soundness of this analysis. *United States v. Wheeler* is particularly instructive because there the Court expressly refused to find that only the State and Federal Governments could be considered distinct sovereigns with respect to each other for double jeopardy purposes, stating that "so restrictive a view of [the dual sovereignty] concept...would require disregard of the very words of the Double Jeopardy Clause." Instead, the *Wheeler* Court reiterated the principle that the sovereignty of two prosecuting entities for these purposes is determined by "the ultimate source of the power under which the respective prosecutions were undertaken." On the basis of this reasoning, the Court held that the Navajo Tribe, whose power to prosecute its members for tribal offenses is derived from the Tribe's "primeval sovereignty" rather than a delegation of federal authority, is an independent sovereign from the Federal Government for purposes of the dual sovereignty doctrine.

In those instances where the Court has found the dual sovereignty doctrine inapplicable, it has done so because the two prosecuting entities did not derive their powers to prosecute from independent sources of authority. Thus, the Court has held that successive prosecutions by federal and territorial courts are barred because such courts are "creations emanating from the same sovereignty." Similarly, municipalities that derive their power to try a defendant from the same organic law that empowers the State to prosecute are not separate sovereigns with respect to the State. These cases confirm that it is the presence of independent sovereign authority to prosecute, not the relation between States and the Federal Government in our federalist system, that constitutes the basis for the dual sovereignty doctrine...

The judgment of the Supreme Court of Alabama is affirmed...

DISSENT: Justice BRENNAN/MARSHALL...[Not Provided.]

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