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Samples of State Court Decisions on Double Jeopardy

The U. S. Constitution and the Supreme Court cases interpreting it establish the minimum amount of protection that a state court must provide when it is interpreting a section of the Bill of Rights that has been made applicable to the states via the doctrine of incorporation, including instances that require a state court to interpret and apply the Double Jeopardy Clause of the Fifth Amendment. A state court interpreting the Double Jeopardy Clause of its own constitution may provide more protection than is afforded by the federal constitution but not less. Below is a sampling of cases decided in part based on a state court's interpretation of its own state constitutional provision governing double jeopardy.

ALABAMA: Reintroduction of two prior convictions at re-sentencing of the defendant for the purpose of enhancement under the Habitual Felony Offender Act did not violate the Double Jeopardy Clauses of the federal or state constitutions, even though the convictions were not certified at original sentencing hearing, where the defendant was put on notice at the original sentencing hearing of the state's intention to offer evidence of his prior felony convictions (see *Ex parte Randle*, 554 So.2d 1138 (Ala. 1989); AL Const. Art. I, § 9; Alabama Code 1975, §§ 13A-5-9, 13A-5-9(b)(2), (c)(2); U.S.C.A. Const.Amend. 5; Const. § 9).

ARKANSAS: Although both the United States and Arkansas constitutions provide that no person shall be subjected to two punishments based on same offense, remedial civil sanctions may be properly imposed without placing the person in jeopardy (see *Cothren v. State*, 344 Ark. 697, 42 S.W.3d 543 (Ark. 2001); Const.Amend. 5; AR CONST Art. 2, § 8).

ARIZONA: If a mistrial is granted as result of conduct that the prosecutor knew or should have known would prejudice the defendant and that could not be cured short of a mistrial, the double jeopardy clause of the Arizona Constitution bars a retrial (see *Beijer v. Adams ex rel. County of Coconino*, 196 Ariz. 79, 993 P.2d 1043, (Ariz.App. Div. 1 1999); AZ CONST Art. 2 § 10).

CALIFORNIA: A court-ordered victim restitution imposed for the first time at re-sentencing following appeal and partial reversal of the defendant's murder convictions was not considered a "punishment" and was therefore not barred under California's constitutional double jeopardy provisions (see *People v. Harvest*, 84 Cal.App.4th 641, 101 Cal.Rptr.2d 135, (Cal.App. 1 Dist., Oct 31, 2000); West's Ann.Cal. Const. Art. 1, § 15; West's Ann.Cal.Penal Code § 1202.4).

FLORIDA: The state's constitutional double jeopardy provision does not prohibit a defendant's retrial when a prior trial has been concluded by mistrial because of a hung jury (see *Lebron v. State*, 2001 WL 987233, 26 Fla. L. Weekly S553 (Fla. 30, 2001); West's F.S.A. Const. Art. 1, § 9).

GEORGIA: The double jeopardy clause of state constitution does not prohibit additional punishment for a separate offense that the legislature has deemed to warrant a separate sanction (see *Mathis v. State*, 273 Ga. 508, 543 S.E.2d 712 (Ga. 2001); GA Const. Art. 1, § 1, Par. 18).

ILLINOIS: The protection against double jeopardy afforded by the Illinois Constitution is no greater than that provided by the U. S. Constitution (see *People v. Ortiz*, 196 Ill.2d 236, 752 N.E.2d 410, 256 Ill.Dec. 530 (Ill. 2001); U.S.C.A. Const.Amend. 5; S.H.A. Const. Art. 1, § 10).

MASSACHUSETTS: The double jeopardy provision of the state constitution was not implicated by reuse of evidence of drunk driving at the defendant's trial on the charge of vehicular homicide by negligent operation, even though the defendant was acquitted in the first-tier trial on drunk driving charges, since in the state's two-tier trial system the defendant remained in continuing jeopardy with regard to other offenses for which he was originally convicted (see *Commissioner v. Woods*, 414 Mass. 343, 607 N.E.2d 1024 (Mass. 1993); M.G.L.A. c. 218, § 26A).

MICHIGAN: Convictions and punishments for involuntary manslaughter and operating a motor vehicle while under the influence of intoxicating liquor (OUIL) causing death do not violate the Double Jeopardy Clauses of the federal or state constitutions, since the offenses protect distinct societal norms, and the statute defining each offense requires proof of an element that the other does not (see *People v. Kulpinski*, 243 Mich.App. 8, 620 N.W.2d 537 (Mich.App. 2000); U.S.C.A.

Const.Amend. 5; M.C.L.A. Const. Art. 1, § 15; M.C.L.A. §§ 257.625(4), 750.321).

MINNESOTA: Forfeiture of a motorist's vehicle after he had been convicted and sentenced for misdemeanor driving while intoxicated (DWI) was not double punishment in violation of the state constitution's double jeopardy clause, since the motorist provided no basis for reading the state double jeopardy clause more broadly than its federal counterpart in the context of DWI-related vehicle forfeitures (see *Johnson v. 1996 GMC Sierra*, 606 N.W.2d 455 (Minn.App. 2000); M.S.A. Const. Art. 1, § 7; M.S.A. § 169.1217).

NEW YORK: Defendant's re-prosecution for first-degree criminal contempt after being found guilty on the lesser charge of second-degree criminal contempt violated the Double Jeopardy Clauses of both the federal and state constitutions, where the defendant's trial was originally on both charges and the defendant was convicted on the second-degree charge only after a partial mistrial was declared as to the first-degree charge (*People v. Campbell*, 269 A.D.2d 460, 703 N.Y.S.2d 498 (N.Y.A.D. 2 Dept. 2000); U.S.C.A. Const.Amend. 5, 14; McKinney's Const. Art. 1, § 6).

TEXAS: A defendant's conviction for assault of a public servant did not violate the double jeopardy provisions of either the federal or state constitutions, even though the defendant had already received prison discipline for the same incident, since prison sanctions are not considered "punishment" for the purposes of double jeopardy analysis (see *Rogers v. State*, 44 S.W.3d 244 (Tex.App. 2001); U.S.C.A. Const.Amend. 5; Vernon's Ann.Texas Const. Art. 1, § 14).

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