

February 1970

Criminal Law—Multiple Offenses from a Single Act not Constitution Double Jeopardy

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Constitutional Law Commons](#), and the [Criminal Law Commons](#)

Recommended Citation

Criminal Law—Multiple Offenses from a Single Act not Constitution Double Jeopardy, 72 W. Va. L. Rev. (1970).

Available at: <https://researchrepository.wvu.edu/wvlr/vol72/iss1/25>

This Abstract is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

ABSTRACTS

Criminal Law—Multiple Offenses from a Single Act not Constituting Double Jeopardy

Defendent discharged a firearm into the abdomen of a pregnant woman, killing the viable child. Following a manslaughter conviction for the death of the child, the state initiated a second action against the defendant, charging assault with intent to murder the mother. The lower court held that defendant could not be prosecuted on the second charge, as such a prosecution would constitute double jeopardy. The state appealed, contending that the charges in the two informations were separate and distinct and that a conviction on the first did not preclude trial upon the second. *Held*, reversed. To constitute double jeopardy, the second prosecution must be for the same offense. It is not enough that the second prosecution merely arises out of the same facts as the first prosecution. The test to be applied to determine whether two charges are distinct and separate is whether one of the charges requires proof of an additional fact which the other does not. If so, then the offenses are not the same, and a conviction or acquittal under one does not bar a prosecution under the other on grounds of double jeopardy. *State v. Shaw*, 219 So. 2d 49 (Fla. 1969) .

It appears that West Virginia would follow the result reached in the *Shaw* case. In addition to the federal prohibition against double jeopardy, U.S. CONST. amend. V, our Constitution provides: "nor shall any person, in any criminal case . . . be twice put in jeopardy of life or liberty for the same offense." W. VA. CONST. art. III, § 5. As interpreted by West Virginia courts, this provision does not affect another or different offense; it applies only to the same offense. *State v. Taylor*, 130 W. Va. 74, 42 S.E. 2d 549 (1943) . West Virginia courts have held that two offenses stemming from the same act or transaction may be separately charged and punished. *State ex rel. Lovejoy v. Skeen*, 138 W. Va. 901, 78 S.E. 2d 456 (1953) .

For a discussion of double jeopardy and multiple transgressions from a single act see 65 W. VA. L. REV. 54 (1962) .