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**UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES
Appellee

v.

Steven G. FLORES,
Missile Technician Petty Officer First Class
United States Navy, Appellant

No. 26-0005
Crim. App. No. 202300290

Argued April 28, 2026—Decided August 27, 2026

Military Judge: Rachel E. Trest

For Appellant: *Frank J. Spinner*, Esq. (argued);
Lieutenant Meggie C. Kane-Cruz, JAGC, USN (on
brief).

For Appellee: *Lieutenant Stephanie N. Fisher*,
JAGC, USN (argued); *Colonel Iain D. Pedden*,
USMC, *Lieutenant K. Matthew Parker*, JAGC, USN,
and *Brian K. Keller*, Esq. (on brief).

Judge SPARKS delivered the opinion of the Court,
in which Chief Judge MAGGS, Judge OHLSON,
Judge HARDY, and Judge JOHNSON joined.

Judge SPARKS delivered the opinion of the Court.

Missile Technician Petty Officer First Class (E-6) Steven G. Flores (Appellant) was convicted of two specifications of rape of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b (2018).¹ He was sentenced to a dishonorable discharge and confinement for life with the possibility of parole. The convening authority approved the findings and sentence. The United States Navy-Marine Corps Court of Criminal Appeals (CCA) affirmed the findings and sentence. Appellant then petitioned this Court and we granted review on January 15, 2026.

Appellant asks this Court to determine whether the military judge abused her discretion when she failed to suppress his statements to Navy Criminal Investigative Service (NCIS) investigators after he invoked his right to counsel under the Sixth Amendment and Military Rule of Evidence (M.R.E.) 305(c)(3).² We conclude that under both the dual sovereignty doctrine and the Supreme Court’s decision in *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009), Appellant’s Sixth Amendment right to counsel was not violated.

I. Background

The charges in this case stem from an incident in which Appellant’s wife found him naked in bed with their nine-year-old daughter who was also naked from the waist down. *United States v. Flores*, 85 M.J. 611, 615 (N-M. Ct. Crim. App. 2025). After the daughter revealed to her mother that Appellant had sexually assaulted her, her

¹ Appellant was acquitted of a third specification of rape of a child.

² The granted issue was:

Whether the military judge abused her discretion in failing to suppress Appellant’s statements to law enforcement after he had invoked his right to counsel in violation of the Sixth Amendment and M.R.E. 305(c)(3).

mother took her to the hospital. *Id.* The hospital contacted the St. Mary's, Georgia, police department, which coordinated with NCIS. *Id.* NCIS took Appellant into custody and delivered him to the St. Mary's police station. *Id.* At this point, NCIS opened a "limited assist" investigation into Appellant. At the police station, in the presence of an NCIS agent, a St. Mary's officer informed Appellant of his *Miranda* rights.³ *Id.* Appellant indicated that he did not want to talk, but the officer continued to ask him questions. *Id.* Appellant admitted that he was naked in the bedroom with his daughter and that his wife interrupted them and accused him of sexual assault. *Id.* Appellant then invoked his right to counsel and the interview with the St. Mary's officer ended. *Id.* The NCIS agent then approached Appellant and read him his Article 31(b), UCMJ, 10 U.S.C. § 831(b) (2018), rights. *Flores*, 85 M.J. at 615. Appellant again invoked his right to counsel and that interview ended. *Id.* At some point following that initial civilian law enforcement interview of Appellant, the case became a joint investigation involving civilian law enforcement and NCIS.⁴

Georgia state officials arrested Appellant for multiple felonies. *Id.* He retained a civilian lawyer who filed a motion for a preliminary hearing and a motion for bail. *Id.* Before the preliminary hearing could take place, the prosecutors agreed to release Appellant to the military for court-martial. *Id.* at 615-16.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ In their briefs before this Court, both parties agree that the initial interview at the St. Mary's police station should be characterized as a "joint investigation." The Government, however, argues that the joint investigation had already ceased when NCIS took custody of Appellant and interviewed him on August 23, 2022. Appellant does not address the issues of whether or when the joint investigation ceased. We find it unnecessary to resolve these issues because, for reasons that we will explain, the existence of a joint investigation would not affect the outcome of this case.

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NCIS Special Agents (SA) JC and CW brought Appellant back to base. During the car ride, SA JC and a trial counsel had the following text exchange:

SA JC: He won't stop talking to us. We are mind-
ing 31B [sic] but any issues with us to try and in-
terview a third time???

TC: Get him to waive in writing if you can

SA JC: Of course

TC: Or do a recording of you advising and him
waiving.

But no, no issues

If you can record it, that would be awesome. He
does have an attorney so be mindful of that.

Id. at 616.

Back at the NCIS office, the agents engaged Appellant in an audio and video recorded interview. *Id.* After several minutes of casual, non-offense related conversation, Appellant asked, “‘So what’s next?’” *Id.* The agents told Appellant that they would need to complete some paperwork and then take him to the hospital to be checked out. *Id.* About twenty more minutes of small talk ensued before SA JC told Appellant, “‘I appreciate you sharing all that stuff with us. Like, I think your family needs you . . . And the best way to do that is, you know, stay in the Navy. Sounds like you’re a good Sailor.’” *Id.* (alteration in original). SA JC then asked Appellant if he would be willing to share his side of the story. Appellant agreed. *Id.*

SA JC gave Appellant an Article 31(b), UCMJ, rights form, which included a cleansing warning stating that “‘any prior illegal admissions or other improperly obtained evidence which incriminated me cannot be used against me in a trial by court-martial.’” *Id.* Appellant reviewed the document and SA JC verbally explained the importance of Appellant knowing and understanding his rights. *Id.* Appellant initialed and signed the rights waiver and SA JC confirmed that Appellant wanted to talk and did not want an attorney. *Id.* During the roughly hour-long interview

that followed, Appellant made statements that largely corroborated his wife and daughter's versions of events and admitted that he had been naked in his bedroom with his daughter when his wife walked in on them. *Id.* at 617.

Pretrial Motions

Prior to trial, Appellant filed a motion to suppress his statements to the Georgia officers and to NCIS because there had been no knowing, intelligent, and voluntary waiver of his Fifth and Sixth Amendment rights. The Government called SA JC to testify. *Id.* SA JC testified that he and SA CW planned for the possibility that Appellant would want to talk during or after the transport, but that they left the decision up to him. *Id.* He stated that, in the car, Appellant began talking about his situation but that the NCIS agents did not try to obtain any admissions or confessions. *Id.* After the Article 39(a), UCMJ, 10 U.S.C. § 839(a) (2018), session, Appellant submitted an affidavit challenging SA JC's version of events. Appellant asserted that, during the car ride, both agents asked him questions and he responded but he did not initiate any conversation himself. *Flores*, 85 M.J. at 617.

The military judge issued a detailed ruling in which she granted the defense motion to suppress evidence derived from the interview with the Georgia law enforcement officers because Appellant's invocation of the right to silence had not been honored. However, she denied the motion to suppress the NCIS interview of Appellant. In her analysis, she gave greater credit to SA JC's version of events. She found that Appellant had willingly initiated the conversation with SAs JC and CW in a manner that could be interpreted as relating to the investigation, in keeping with *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). She noted that Appellant's question, "So what's next?" presented circumstances similar to those in *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-46 (1983), in which the Supreme Court concluded that the accused's question, "Well, what is going to happen to me now?," demonstrated a willingness to engage in generalized discussion about the case. She also found that the agents had ensured that Appellant

knowingly, intelligently, and voluntarily waived his rights to silence and to counsel, highlighting that SA JC confirmed with Appellant that he had read and understood his rights, that he wanted to talk to the agents, and that he did not want his attorney present.

In addition, the military judge determined that Appellant's interrogation was admissible under the dual sovereignty doctrine. She highlighted the Supreme Court's finding in *Texas v. Cobb*, 532 U.S. 162, 167 (2001), that the Sixth Amendment right to counsel is offense specific and noted that the majority of the circuits have recognized that dual sovereignty applies in a Sixth Amendment context.

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In a published opinion, the CCA examined multiple issues including whether the military judge abused her discretion in failing to suppress Appellant's statements after he invoked his right to counsel in violation of the Fifth and Sixth Amendments and M.R.E. 305(c)(3). *Flores*, 85 M.J. at 614. The lower court determined that the military judge did not err in concluding that the NCIS agents did not violate Appellant's Fifth Amendment right to counsel and fully adopted her findings of fact. *Id.* at 620. It highlighted the fact that the military judge was positioned to assess the credibility of SA JC's testimony concerning the conversation with Appellant and that the text messages between SA JC and trial counsel supported his version of events. *Id.* It agreed that Appellant had initiated the conversation with the NCIS agents and willingly engaged with them in a manner that did not violate *Edwards*. *Id.* at 621. The CCA also agreed with the military judge that Appellant understood and voluntarily waived his Fifth Amendment rights when presented with his notice and waiver of rights form. *Id.*

Citing language in *Montejo*, 556 U.S. at 778, *Michigan v. Harvey*, 494 U.S. 344 (1990), and M.R.E. 305(e)(3)(B), the lower court determined that Appellant's Sixth Amendment claim was disposed of because the military judge did not err in denying Appellant's Fifth Amendment claim. *Flores*,

85 M.J. at 624. However, because the military judge had not made her decision based on this rationale, the lower court also looked at whether the dual sovereignty doctrine should apply when there is a Sixth Amendment question. *Id.* at 624-25. It noted that, while the Supreme Court has not yet ruled on whether the dual sovereignty doctrine applies when deciding if a Sixth Amendment violation in one court is relevant to the same Sixth Amendment claim in another, it has “provided strong dicta to that effect.” *Id.* at 622. It referenced *Cobb* and its provision that there is no constitutional difference between the meaning of the term “offense” in the contexts of double jeopardy and of the right to counsel. *Id.* at 622-23. The CCA found the fact that this was a joint investigation was not determinative. *Id.* at 625. It recognized the circuit split among federal courts, but concluded that:

The Supreme Court’s jurisprudence is clear that the Sixth Amendment right to counsel is *offense* specific, not *investigation* specific. Appellant’s contention that we must consider the nature of the investigation is directly contrary to the facts considered by the Supreme Court in *Cobb* where the same investigators conducting the same investigation questioned Cobb about a separate offense. We must take the Supreme Court at its word when it pronounces that there is “no constitutional difference between the meaning of the term ‘offense’ in the contexts of double jeopardy and the right to counsel.” Here, the offenses for which Appellant was pending trial in Georgia are not the same as those for which he was convicted at court-martial. As a result, his interrogation without the presence of his counsel was not a violation given the fact that he was prosecuted by a separate sovereign and validly waived his right to counsel.

Id. (footnote omitted) (quoting *Cobb*, 532 U.S. at 173).

II. Standard of Review

In reviewing a lower court’s decision on a military judge’s denial of a motion to suppress evidence, this Court has typically “pierced through that intermediate level and

examined the military judge’s ruling, then decided whether the Court of Criminal Appeals was right or wrong in its examination of the military judge’s ruling.” *United States v. Blackburn*, 80 M.J. 205, 211 (C.A.A.F. 2020) (internal quotation marks omitted) (quoting *United States v. Shelton*, 64 M.J. 32, 37 (C.A.A.F. 2006)). A military judge’s ruling on a motion to suppress evidence is reviewed for an abuse of discretion. *United States v. Shields*, 83 M.J. 226, 230 (C.A.A.F. 2023) (citing *United States v. White*, 80 M.J. 322, 327 (C.A.A.F. 2020)). Abuse of discretion occurs when the military judge: (1) bases a ruling on findings of fact that are not supported by the evidence; (2) uses incorrect legal principles; (3) applies correct legal principles in a clearly unreasonable way; or (4) fails to consider important facts. *United States v. Commisso*, 76 M.J. 315, 321 (C.A.A.F. 2017). When evaluating for abuse of discretion, we review findings of fact for clear error and conclusions of law de novo. *United States v. Weston*, 67 M.J. 390, 392 (C.A.A.F. 2009) (citing *United States v. Gallagher*, 66 M.J. 250, 253 (C.A.A.F. 2008)).

III. Analysis

Applicable Law

Though the granted issue is limited to Appellant’s Sixth Amendment rights, the constitutional right to counsel spans both the Fifth and Sixth Amendments of the Constitution. The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI. M.R.E. 305(c) implements this right to counsel. Under M.R.E. 305(c)(4), if a person is subject to interrogation and chooses to exercise their right to counsel, interrogation must stop until counsel is present. After being warned of his rights, an accused may waive those rights and make a statement as long as the waiver is made freely, knowingly, and intelligently. M.R.E. 305(e)(1).

The Sixth Amendment right to counsel may be waived if the relinquishment is voluntary, knowing, and intelligent. *Montejo*, 556 U.S. at 786. An accused may waive the

right even if he is already represented by counsel, and the decision to waive need not be counseled. *Id.* The Supreme Court established in *Montejo* that the “doctrines ensuring voluntariness of the Fifth Amendment waiver simultaneously ensure the voluntariness of the Sixth Amendment waiver.” *Id.* at 795.

In *Edwards*, the Supreme Court clarified that “an accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” 451 U.S. at 484-85. M.R.E. 305(e)(3)(B) similarly states:

If an accused or suspect interrogated after preferal of charges . . . requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.

The Sixth Amendment right to counsel is offense specific. “It cannot be invoked once for all future prosecutions.” *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). The Sixth Amendment right’s effect of invalidating subsequent waivers in police-initiated interviews is also offense specific. *Id.* In the civilian context, the Sixth Amendment right to counsel attaches “at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Id.* (internal quotation marks omitted) (quoting *United States v. Gouveia*, 467 U.S. 180, 188 (1984)). In the military, the Sixth Amendment right attaches upon preferal of charges. M.R.E. 305(c)(3).

Discussion

A. Dual Sovereignty Doctrine

“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.’” *Heath v. Alabama*, 474 U.S. 82, 88 (1985) (quoting *United States v. Lanza*, 260 U.S. 377, 382 (1922)). “[W]here there are two sovereigns, there are two laws, and two offences.” *Gamble v. United States*, 587 U.S. 678, 683-84 (2019) (quoting *Grady v. Corbin*, 495 U.S. 508, 529 (1990) (Scalia, J., dissenting)). In *Gamble*, examining the doctrine in the context of the double jeopardy clause, the Supreme Court upheld the idea that “a crime under one sovereign’s laws is not ‘the same offence’ as a crime under the laws of another sovereign.” *Id.* at 681. Under the dual sovereignty doctrine, federal and state offenses that involve the same conduct are not the same offense. *United States v. Warrington*, 78 F.4th 1158, 1165 (10th Cir. 2023). Therefore, the federal government may prosecute a defendant under federal statute even if a state has prosecuted him for the same conduct under state law.

Appellant argues that the military judge erred in finding the dual sovereignty doctrine applied. He claims that the Supreme Court in *Cobb* indicated that the *Blockburger*⁵ test and not the dual sovereignty doctrine should be used to determine if two offenses are the same for Sixth Amendment right to counsel purposes. He also posits that the doctrine does not apply because this was a joint military-civilian investigation.

The Government counters that, though it has not explicitly said so, the Supreme Court decisions surrounding this question indicate that the dual sovereignty doctrine applies in the Sixth Amendment context. The Government argues that the military judge correctly determined that

⁵ In *Blockburger v. United States*, the Supreme Court decided that “where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not.” 284 U.S. 299, 304 (1932) (citation omitted).

identical underlying conduct is not the same offense when prosecuted by separate sovereigns. She therefore properly found Appellant's Sixth Amendment rights were not violated since, in the military, the Sixth Amendment right to counsel attaches at the preferral of charges and charges were not preferred against Appellant at the time of the interview.

Though the Supreme Court has not ruled on whether the dual sovereignty doctrine extends from double jeopardy to the Sixth Amendment right to counsel, we agree with the military judge and the CCA that *Cobb* provides significant guidance. In *Cobb*, the Supreme Court considered whether the Sixth Amendment right to counsel extended to crimes that were factually related to those that were charged. 532 U.S. at 166. In that case, the two crimes in question were a burglary and an associated double murder. *Id.* *Cobb* stated that the Sixth Amendment right to counsel is offense specific. "It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced." *Id.* at 167 (internal quotation marks omitted) (quoting *McNeil*, 501 U.S. at 175). The Court in *Cobb* found no constitutional difference between the meaning of "offense" in the contexts of double jeopardy and the right to counsel. *Id.* at 173. It went on to clarify that, "when the Sixth Amendment right to counsel attaches, it does encompass offenses that, even if not formally charged, would be considered the same offense under the *Blockburger* test." *Id.* In a footnote, the *Cobb* Court added that, "we could just as easily describe the Sixth Amendment as 'prosecution specific' insofar as it prevents discussion of charged offenses as well as offenses that, under *Blockburger*, could not be the subject of a later prosecution." *Id.* at 173 n.3.

Cobb established that the Sixth Amendment attaches to offenses, not investigations. It also established that there is no difference between the meaning of the word "offense" in the contexts of double jeopardy and the Sixth Amendment right to counsel. As noted in *Gamble* in the double jeopardy context, two offenses are not the same if prosecuted by different sovereigns. 587 U.S. at 681-82. It

therefore should follow that, since the military and the states are different sovereigns and the term offense means the same thing when applied to double jeopardy in *Gamble* or right to counsel as in the present case, the dual sovereignty doctrine applies and the two offenses are not the same.

We agree with the majority of circuit courts which have interpreted *Cobb* to mean that dual sovereignty should apply to Sixth Amendment questions just as it applies in the double jeopardy context. Following this logic, offenses prosecuted by state and federal entities are two separate offenses for Sixth Amendment purposes even if they are based on the same criminal act and are considered identical under *Blockburger*. The United States Courts of Appeals for the First, Fourth, Fifth, Sixth, Tenth, and Eleventh Circuit Courts of Appeals have all found that the Supreme Court indicated in *Cobb* that, when an accused's conduct violates the law in two different sovereigns, the defendant commits two separate offenses under the dual sovereignty doctrine. Therefore, invocation of the right to counsel with one sovereign has no effect on the right to counsel in the other sovereign.⁶ “Because *Cobb* clearly

⁶ See *Warrington*, 78 F.4th at 1165 (stating that “[i]n light of *Cobb*, we agree with the majority of circuits that the dual sovereignty doctrine extends to [the right to counsel] context”); *Turner v. United States*, 885 F.3d 949, 955 (6th Cir. 2018) (joining the view of the majority of circuits that applies the dual sovereignty doctrine from the double jeopardy context to the “Sixth Amendment right-to-counsel context”); *United States v. Burgest*, 519 F.3d 1307, 1310 (11th Cir. 2008) (holding that “where conduct violates laws of separate sovereigns, the offenses are distinct for purposes of the Sixth Amendment right to counsel”); *United States v. Alvarado*, 440 F.3d 191, 198 (4th Cir. 2006) (stating that “we join those circuits that have employed the dual sovereignty doctrine in the Sixth Amendment context”); *United States v. Coker*, 433 F.3d 39, 47 (1st Cir. 2005) (holding that “as a result of the Supreme Court’s decision in *Cobb*, the dual sovereignty doctrine applies in the Sixth Amendment right to counsel context”); *United States v. Avants*, 278 F.3d 510, 517 (5th Cir. 2002) (concluding that “it seems rather clear that the Supreme Court would require us to apply double jeopardy principles in

indicates that the definition of offense is the same in the right to counsel and double jeopardy contexts, the dual sovereignty doctrine had equal application in both.” *Alvarado*, 440 F.3d at 196 (citation omitted).

The United States Courts of Appeals for the Second and Eighth Circuits, however, have ruled that the Supreme Court did not intend for dual sovereignty to apply in the Sixth Amendment right to counsel context. They instead have interpreted *Cobb* as applying *Blockburger*, but not dual sovereignty, to the Sixth Amendment right to counsel. See *United States v. Mills*, 412 F.3d 325 (2d Cir. 2005); *United States v. Red Bird*, 287 F.3d 709 (8th Cir. 2002).

In *Mills*, the Second Circuit affirmed the suppression in a federal prosecution of statements that were originally made to state law enforcement in violation of the right to counsel, where the underlying conduct and factual elements of the offenses were identical. 412 F.3d at 328, 331. The court concluded that *Cobb* did not support “a dual sovereignty exception to its holding that when the Sixth Amendment right to counsel attaches, it extends to offenses not yet charged that would be considered the same offense under *Blockburger*.” *Id.* at 330. The suppressed evidence in *Mills* was directly obtained through questioning by state law enforcement that occurred in violation of the appellant’s right to counsel. *Id.* at 328. Significantly, in *United States v. Worjloh*, the Second Circuit cabined their decision in *Mills*, stating that the holding “is limited to situations in which federal prosecutors seek to admit evidence obtained by state and local prosecutors in violation of the Sixth Amendment.” 546 F.3d 104, 109 (2d Cir. 2008). In the present case, the evidence in question was obtained by NCIS when they questioned Appellant after he was in their custody.

In *Red Bird*, the two sovereigns in question were federal and tribal. 287 F.3d at 711-12. The Eighth Circuit

determining whether two offenses are the same in the Sixth Amendment context”).

determined that “pursuant to the [*Blockburger*] test set forth in *Texas v. Cobb*, the federal and tribal complaints charge the same offense for Sixth Amendment purposes.” *Id.* at 715. The court emphasized the joint investigation by tribal and federal authorities, but it also highlighted the “unique and limited” nature of tribal sovereignty, a factor that distinguishes *Red Bird* from this case. *Id.* (internal quotation marks omitted) (quoting *United States v. Wheeler*, 435 U.S. 313, 323 (1978)).

Appellant emphasizes that, like his own case, both *Mills* and *Red Bird* involved joint investigations. However, nothing in the Supreme Court precedent on dual sovereignty singles out joint investigations as an exception. Several of the federal circuit cases upholding the application of the dual sovereignty doctrine in the Sixth Amendment context involve joint investigations. *See Turner*, 885 F.3d at 951 (stating that the appellant was arrested as part of a joint federal-state task force); *Alvarado*, 440 F.3d at 194 (noting that the appellant was arrested as a result of combined state and federal law enforcement officer surveillance); *Coker*, 433 F.3d at 46 (adopting the district court’s finding that “[t]he state authorities began an investigation . . . on the day of the incident. Within a day or two, they notified [the Bureau of Alcohol, Tobacco, and Firearms] of the possibility of a federal crime, and for a time the two sovereigns continued the investigation in parallel.” (first alteration in original) (internal quotation marks omitted) (quoting *United States v. Coker*, 298 F. Supp. 2d 184, 192 (D. Mass. 2003))).

In *Coker*, the First Circuit directly addressed the joint investigation question. It contemplated what it called the “*Bartkus* exception” to the dual sovereignty doctrine, based on the Supreme Court’s decision in *Bartkus v. Illinois*, 359 U.S. 121 (1959). 433 F.3d at 45. The exception exists where “one sovereign so thoroughly dominates or manipulates the prosecutorial machinery of another that the latter retains little or no volition in its own proceedings.” *Id.* (quoting *United States v. Guzman*, 85 F.3d 823, 827 (1st Cir. 1996)). The First Circuit concluded that, in the Sixth Amendment

context, “if it appears that one sovereign is controlling the prosecution of another merely to circumvent the defendant’s Sixth Amendment right to counsel the dual sovereignty doctrine will not apply.” *Id.* Otherwise, “[c]ooperative law enforcement efforts between independent sovereigns are commendable, and, without more, such efforts will not furnish a legally adequate basis for invoking the . . . exception to the dual sovereign rule.” *Id.* at 46 (second alteration in original) (quoting *Guzman*, 85 F.3d at 828); see *Alvarado*, 440 F.3d at 198 (stating that “while federal and state law enforcement authorities did engage in joint investigation, such collaborative efforts can hardly be dispositive of government misconduct”).

Like the First Circuit, we note the advantages of cooperation between independent law enforcement entities and find no precedent that supports any kind of joint investigation exception in this case. As articulated by the Fourth Circuit in *Alvarado*, “federal and state crimes are necessarily separate offenses for the purposes of the Sixth Amendment because they originate from autonomous sovereigns that each have authority to define and prosecute criminal conduct.” 440 F.3d at 194. We conclude that absent the type of unusual circumstances arising out of the circuit court cases that implicated the *Bartkus* exception, the mere fact that this was a joint investigation does not alter our analysis of this issue.

The language the Supreme Court utilized in *Cobb* indicates an intention to treat offenses identically in the Fifth Amendment double jeopardy and the Sixth Amendment right to counsel context. As noted by the First Circuit in *Coker*, if the Supreme Court intended to incorporate only the *Blockburger* test into its Sixth Amendment jurisprudence, then its statement in *Cobb* that it saw “no constitutional difference between the meaning of the term ‘offense’ in the contexts of double jeopardy and of the right to counsel” would not make sense, “because there would be a difference in the meaning of the term ‘offense’ in the contexts of double jeopardy and of the right to counsel.” 433 F.3d at 44 (internal quotation marks omitted) (citation omitted).

The right to counsel attaches to the offense being prosecuted by a particular sovereign, not to the offense across all prosecutions. Here, the military charges originated with the federal government, a sovereign autonomous from the state of Georgia. The military charges constituted a separate offense from the state charge for Sixth Amendment purposes and the Sixth Amendment had not yet attached to the military prosecution because those charges had not been preferred.⁷ Therefore, the NCIS agents' questioning of Appellant did not violate his Sixth Amendment right to counsel. The military judge did not abuse her discretion in concluding that the dual sovereignty doctrine applied.

B. Fifth Amendment Waiver

Even setting aside the application of the dual sovereignty doctrine, Appellant's claim that his Sixth Amendment right to counsel was violated would still fail given the Supreme Court's language in *Montejo* that "doctrines ensuring voluntariness of the Fifth Amendment waiver simultaneously ensure the voluntariness of the Sixth Amendment waiver." 556 U.S. at 795. Thus, when a defendant is read his *Miranda* rights, including the right to have counsel present during interrogation, and waives those rights, he typically also waives the Sixth Amendment right to counsel. *Id.* at 786. "[A]n accused who is admonished with the warnings prescribed by this court in *Miranda* . . . has been sufficiently apprised of the nature of his Sixth Amendment rights, and of the consequences of abandoning those rights, so that his waiver on this basis will be considered a knowing and intelligent one." *Id.* at 786-87 (second alteration in original) (internal quotation marks omitted) (quoting *Patterson v. Illinois*, 487 U.S. 285, 296 (1988)). Though this Court has not yet applied this aspect of *Montejo* in a military context, nothing about an accused's rights under M.R.E. 305 indicates reason not to do so. Therefore, even if Appellant's Sixth Amendment right to counsel applied to

⁷ Because the military charges were not preferred for more than a month after the NCIS interview, M.R.E. 305(c)(3) does not apply.

the NCIS interrogation, he would also have to establish that the military judge abused her discretion when she determined NCIS agents did not violate his Fifth Amendment rights.

However, we agree with the CCA that the military judge did not abuse her discretion when she determined that Appellant reinitiated communication with the police within the meaning of *Edwards*, and that he validly waived his Article 31(b) and *Miranda* rights under M.R.E. 305(e)(1). *Flores*, 85 M.J. at 620-21, 624. We also see no reason to question the military judge's conclusion that Appellant voluntarily initiated the conversation with the NCIS agents in a manner that could be interpreted as relating to the investigation and demonstrated a willingness to engage in generalized discussion about the case. In addition, we agree with the CCA and the military judge that SA JC took care to ensure that Appellant read and understood his rights, that he wanted to talk without his attorney present, and that he showed no signs of confusion or lack of comprehension. *Id.* at 621. As such, we also conclude Appellant knowingly, intelligently, and voluntarily waived his Fifth Amendment rights to silence and to counsel. Though Appellant states in his brief that the NCIS agents engaged in custodial interrogation of Appellant without counsel present and without reinitiation by Appellant, he does not offer any legal arguments to challenge either the military judge's or the CCA's conclusions that his Fifth Amendment rights were waived. Given that the military judge properly denied Appellant's Fifth Amendment claim, it logically follows that Appellant's reinitiation with NCIS also made his statement admissible under the Sixth Amendment, regardless of whether he was represented by counsel or the right to counsel had attached. *See Montejo*, 556 U.S. at 795.

IV. Conclusion

The decision of the United States Navy-Marine Corps Court of Criminal Appeals is affirmed.