NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* FELIX

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 90–1599. Argued January 14, 1992—Decided March 25, 1992

During the summer of 1987, respondent Felix manufactured methamphetamine at an Oklahoma facility. After Drug Enforcement Administration (DEA) agents shut down that facility, Felix ordered additional chemicals and equipment from a DEA informant for delivery in Missouri. Federal Government officials observed the delivery, arrested him, and charged him with the offense of attempting to manufacture an illegal drug. At his trial in Missouri, the Government, in order to establish Felix's criminal intent, introduced evidence that he had manufactured methamphetamine in Oklahoma, and he was convicted. Subsequently, he was named in, *inter alia,* six counts of an indictment filed in a Federal District Court in Oklahoma. Count 1 charged him with conspiracy to manufacture, possess, and distribute methamphetamine. Two of the overt acts supporting this charge were based on the same conduct that had been the subject of the Missouri prosecution. The other counts charged him with substantive drug offenses, and at trial the Government introduced much of the same evidence of the Missouri and Oklahoma transactions that had been introduced at the Missouri trial. Felix was convicted, but the Court of Appeals reversed, relying on language in *Grady* v. *Corbin,* 495 U.S. 508, 521, that the Double Jeopardy Clause bars a subsequent prosecution where the government, ``to establish an essential element of an offense charged in that prosecution, will prove conduct that constitutes an offense for which the defendant has already been prosecuted.'' With respect to the conspiracy count, the court observed that in both trials, the Government proved that Felix had learned to make, and had manufactured, methamphetamine in Oklahoma and had sought to purchase more chemicals and equipment in Missouri. The court also

noted that the direct evidence supporting the substantive offenses—that Felix had purchased chemicals and equipment during the spring of 1987 and had manufactured methamphetamine in Oklahoma—had been introduced at the Missouri trial to show intent.

UNITED STATES *v.* FELIX

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Held: The Double Jeopardy Clause does not bar Felix's prosecution on either the substantive drug offenses or the conspiracy charge. Pp. 5–13.

(a) None of the substantive offenses for which Felix was prosecuted in Oklahoma is in any sense the same offense for which he was prosecuted in Missouri. The actual crimes charged in each case were different in both time and place, and no common conduct links them. In addition, mere overlap in proof between two prosecutions does not establish a double jeopardy violation. *Dowling* v. *United States,* 493 U.S. 342. Thus, the Court of Appeals erred to the extent that it assumed that if the Government offers in evidence in one prosecution acts of misconduct that might ultimately be charged as criminal offenses in a second prosecution, the latter prosecution is barred. And it gave an extravagant reading to *Grady, supra,* which disclaimed any intention of adopting a ```same evidence''' test, *id.,* at 521 and n. 12. Pp.6–8.

(b) A substantive crime and a conspiracy to commit that crime are not the ``same offense'' for double jeopardy purposes, see, *e. g., United States* v. *Bayer,* 331 U.S. 532; *Pinkerton* v. *United States,* 328 U.S. 640, 643, even if they are based on the same underlying incidents, because the ``essence'' of a conspiracy offense ``is in the agreement or confederation to commit a crime,'' *Bayer, supra,* at 542. This established doctrine predates, and was not questioned in, *Grady, supra.* In addition, while *Grady*—which involved a State's reliance on a defendant's two traffic offense convictions to sustain later-filed homicide and assault charges arising from the same accident—may be useful in cases arising from a ``single course of conduct,'' it is much less helpful in analyzing prosecutions involving multilayered conduct, such as the conspiracy prosecution here. Thus, the Court of Appeals erred in essentially reading *Grady* as substituting for the ``same offence'' language of the Double Jeopardy Clause a test based on whether the two prosecutions involve the same conduct. Pp.9–12.

926 F.2d 1522, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined, and in Parts I and II of which STEVENS and BLACKMUN, JJ., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which BLACKMUN, J., joined.