

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MANUEL DE JESÚS GORDILLO-ESCANDÓN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

*On Petition for Writ of Certiorari to the United
States Court of Appeals
for the Fourth Circuit*

(CA4 No. 17-4481)
(D.S.C. No. 6:17-cr-00206-BHH-3)

Petition for Writ of Certiorari

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QUESTION PRESENTED

Justices Ginsburg and Thomas have suggested that the Court should be on the lookout for a case in which to re-visit Double Jeopardy in the context of successive federal and state prosecutions:

The double jeopardy proscription is intended to shield individuals from the harassment of multiple prosecutions for the same misconduct. *Green v. United States*, 355 U. S. 184, 187, 78 S. Ct. 221, 2 L. Ed. 2d 199, 77 Ohio Law Abs. 202 (1957). Current “separate sovereigns” doctrine hardly serves that objective. States and Nation are “kindred systems,” yet “parts of ONE WHOLE.” The Federalist No. 82, p. 245 (J. Hopkins ed., 2d ed. 1802) (reprint 2008). Within that whole is it not “an affront to human dignity,” *Abbate v. United States*, 359 U. S. 187, 203, 79 S. Ct. 666, 3 L. Ed. 2d 729 (1959) (Black, J., dissenting), “inconsistent with the spirit of [our] Bill of Rights,” *Developments in the Law — Criminal Conspiracy*, 72 Harv. L. Rev. 920, 968 (1959), to try or punish a person twice for the same offense? Several jurists and commentators have suggested that the question should be answered with a resounding yes: Ordinarily, a final judgment in a criminal case, just as a final judgment in a civil case, should preclude renewal of the fray anywhere in the Nation. The matter warrants attention in a future case in which a defendant faces successive prosecutions by parts of the whole USA.

Puerto Rico v. Sánchez Valle, ___ U.S. ___, 136 S. Ct. 1863, 1877 (2016) (Ginsburg, J., concurring, joined by Thomas, J.).

The questions presented here provide the Court

1. Where a criminal defendant has already been convicted of an offense in a state criminal proceeding, may the United States thereafter prosecute the defendant for the same offense without violating the Fifth Amendment’s prohibition on Double Jeopardy?

LIST OF PARTIES

All parties appear in the caption of this Petition's cover page.

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Manuel de Jesús Gordillo-Escandón respectfully petitions for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS AND ORDERS BELOW

The Fourth Circuit Court of Appeals did not select its opinion for publication. It is reprinted in the Appendix.

The District Court did not prepare a reported opinion. Its pertinent rulings are reprinted in the Appendix.

JURISDICTION

The district court had jurisdiction over the federal criminal charges. 18 U.S.C. § 3231.

Because denials of Double Jeopardy motions are immediately appealable pursuant to *Abney v. United States*, 431 U.S. 651 (1977), the Fourth Circuit had appellate jurisdiction. 28 U.S.C. § 1291.

This Court has jurisdiction to review the judgment of the Fourth Circuit. 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Provisions

U.S. Const. Amend. V:

“No...person shall be subject for the same offence to be twice put in jeopardy of life or limb.”

* * *

Federal Statutes

18 U.S.C. § 924(c)(1)(A):

Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

* * *

21 U.S.C. § 841(a)(1), (b)(1)(B):

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance....

(b) Penalties. Except as otherwise provided in section 409, 418, 419, or 420, any person who violates subsection (a) of this section shall be sentenced as follows...:

(1)...

(B) In the case of a violation of subsection (a) of this section involving--

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$ 5,000,000 if the defendant is an individual or \$ 25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$ 8,000,000 if the defendant is an individual or \$ 50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall

not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.....

* * *

21 U.S.C. § 846:

“Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”

* * *

State Statutes

S.C. Code § 44-53-375(C):

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as “trafficking in methamphetamine or cocaine base” and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(2) twenty-eight grams or more, but less than one hundred grams:

(a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

* * *

S.C. Code § 16-23-20:

It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

(1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor's constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers employed as private detectives or private investigators;

(2) members of the Armed Forces of the United States, the National Guard, organized reserves, or the State Militia when on duty;

(3) members, or their invited guests, of organizations authorized by law to purchase or receive firearms from the United States or this State or regularly enrolled members, or their invited guests, of clubs organized for the purpose of target shooting or collecting modern and antique firearms while these members, or their invited guests, are at or going to or from their places of target practice or their shows and exhibits;

(4) licensed hunters or fishermen who are engaged in hunting or fishing or going to or from their places of hunting or fishing while in a vehicle or on foot;

(5) a person regularly engaged in the business of manufacturing, repairing, repossessing, or dealing in firearms, or the agent or representative of this person, while possessing, using, or carrying a handgun in the usual or ordinary course of the business;

(6) guards authorized by law to possess handguns and engaged in protection of property of the United States or any agency of the United States;

(7) members of authorized military or civil organizations while parading or when going to and from the places of meeting of their respective organizations;

(8) a person in his home or upon his real property or a person who has the permission of the owner or the person in legal possession or the person in legal control of the home or real property;

(9) a person in a vehicle if the handgun is:

(a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle; however, this item is not violated if the glove compartment, console, or trunk is opened in the presence of a law enforcement officer for the sole purpose of retrieving a driver's license, registration, or proof of insurance. If the person has been issued a concealed weapon permit pursuant to Article 4, Chapter 31, Title 23, then the person also may secure his weapon under a seat in a vehicle, or in any open or closed storage compartment within the vehicle's passenger compartment; or

(b) concealed on or about his person, and he has a valid concealed weapons permit pursuant to the provisions of Article 4, Chapter 31, Title 23;

(10) a person carrying a handgun unloaded and in a secure wrapper from the place of purchase to his home or fixed place of business or while in the process of changing or moving one's residence or changing or moving one's fixed place of business;

(11) a prison guard while engaged in his official duties;

(12) a person who is granted a permit under provision of law by the State Law Enforcement Division to carry a handgun about his person, under conditions set forth in the permit, and while transferring the handgun between the permittee's person and a location specified in item (9);

(13) the owner or the person in legal possession or the person in legal control of a fixed place of business, while at the fixed place of business, and the employee of a fixed place of business, other than a business subject to Section

16-23-465, while at the place of business; however, the employee may exercise this privilege only after: (a) acquiring a permit pursuant to item (12), and (b) obtaining the permission of the owner or person in legal control or legal possession of the premises;

(14) a person engaged in firearms-related activities while on the premises of a fixed place of business which conducts, as a regular course of its business, activities related to sale, repair, pawn, firearms training, or use of firearms, unless the premises is posted with a sign limiting possession of firearms to holders of permits issued pursuant to item (12);

(15) a person while transferring a handgun directly from or to a vehicle and a location specified in this section where one may legally possess the handgun.

(16) Any person on a motorcycle when the pistol is secured in a closed saddlebag or other similar closed accessory container attached, whether permanently or temporarily, to the motorcycle.

STATEMENT OF THE CASE

A. The Joint Federal-State Investigation

In December 2016, federal law enforcement “received a request for assistance” from South Carolina law enforcement concerning the trafficking of methamphetamine. [App. 17].¹ On December 28, 2016, federal agents “agreed to assist” state counterparts in the execution of a search warrant of a hotel room believed to be occupied by two couriers, including Manuel de Jesús Gordillo-Escandón. [App. 18]. That same day, according to the Government, state law enforcement “with the assistance from” federal law enforcement, executed the warrant and found in the room two handguns and approximately five ounces of methamphetamine. [App. 18]. Mr. Gordillo-Escandón and another individual were arrested on state charges. [App. 18].

B. The State Charges

Mr. Gordillo-Escandón was charged in state court in a two-count indictment, one for trafficking in methamphetamine and one for possession of a firearm in the commission of that offense:

Count I

That MANUEL DE JESUS GORDILLO-ESCANDON did in Greenville County, on or about the 28th day of December, 2016, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, de-

¹ “App. X” corresponds to page X of appendix appearing at the end of this Petition.

liver or bring into the State or was knowingly in actual or constructive possession of more than 100 grams but less than 200 grams of Methamphetamine (Crank). This is in violation of § 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Count II

That MANUEL DE JESUS GORDILLO-ESCANDON did in Greenville County, on or about the 28th day of December, 2016, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Trafficking Methamphetamine. This is in violation of § 16-23-0490 of the South Carolina Code of Laws (1976) as amended

[App. 19].

C. The Federal Charges

In March 2017, a federal grand jury in the District of South Carolina returned an indictment growing out the events of December 28, 2016. [App. 9]. Mr. Gordillo-Escandón was charged with one count of conspiring to possess with intent to distribute methamphetamine, with a quantity attributable to him of more than 50 grams of a mixture or substance, in violation of 21 U.S.C. § 841(a)(1). [App. 9]. One count charged him with possessing with intent to distribute a mixture or substance containing 50g or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). [App. 9]. And one count charged him with possessing a handgun in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). [App. 9].

D. The State Conviction

In contrast to normal parallel proceedings, the state prosecutor would not dismiss the state charges following the federal indictment and provided Mr. Gordillo-Escandón with a plea offer with an expiration date. [App. 4].

On June 12, 2017, Mr. Gordillo-Escandón pleaded guilty in state court to two lesser-included offenses of the indicted ones: trafficking between 10g-28g of methamphetamine, in violation of S.C. Code § 44-53-375(C)(3); and unlawful carrying of a weapon, in violation of S.C. Code § 16-23-20. [App. 20-21]. He received a three-year sentence on the former charge and a one-year concurrent sentence on the latter. [App. 20-21].

E. The District Court’s Denial of the Motion to Dismiss

Following his state-court convictions, Mr. Gordillo-Escandón moved to dismiss his federal charges, arguing, as relevant to this collateral-order appeal, Double Jeopardy. Although the Government had conceded and the district court found that the federal charges were for the “same conduct”, [App. 007], as Mr. Gordillo-Escandón’s state-court convictions, the district court denied the motion to dismiss from the bench. [App. 7-8].

F. The Appeal

The day after the district court’s denial of the motion to dismiss, Mr. Gordillo-Escandón filed a notice of appeal to the U.S. Court of Appeals for the Fourth Circuit, which affirmed via an unpublished decision on December 13, 2017. [App. 001]. It entered judgment the same day.

Trial below in the federal case has not yet occurred.

REASONS FOR GRANTING THE PETITION

A. The Fifth Amendment's Prohibition on Double Jeopardy Should Prevent a Federal Criminal Trial After a State Conviction for the Same Conduct.

The Fifth Amendment provides that no “person shall be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. Amend. V. Despite the plain text of that constitutional provision that should prohibit successive prosecutions for the “same offense”, this Court has nonetheless held that the Constitution provides no protection against a successive federal-state prosecution, pursuant to the so-called separate-sovereign exception to Double Jeopardy. *Abbate v. United States*, 359 U.S. 187, 195 (1959).

The *Abbate* decision was a 5-4 split. Justice Black's dissent cogently criticized the majority's separate-sovereignty exception:

[T]hat identical conduct of an accused might be prosecuted twice, once by a State and once by the Federal Government, because the 'offense' punished by each is in some, meaningful, sense different. The legal logic used to prove one thing to be two is too subtle for me to grasp.

I am also not convinced that a State and the Nation can be considered two wholly separate sovereignties for the purpose of allowing them to do together what, generally, neither can do separately. In the first place, I cannot conceive that our States are more distinct from the Federal Government than are foreign nations from each other. And it has been recognized that most free countries have accepted a prior conviction elsewhere as a bar to a second trial in their jurisdiction. In the second place, I believe the Bill of Rights' safeguard against double jeopardy was intended to establish a broad national policy against federal courts trying or punishing a man a second time after acquittal or conviction in any

court. It is just as much an affront to human dignity and just as dangerous to human freedom for a man to be punished twice for the same offense, once by a State and once by the United States, as it would be for one of these two Governments to throw him in prison twice for the offense.

Id. at 202-03 (Black, J., dissenting) (footnote and citation omitted).

At the time of *Abbate*, this Court had not yet incorporated Double Jeopardy to the states via the Fourteenth Amendment. It has since done so, owing in part to the universally recognized unfairness in successive prosecutions:

The fundamental nature of the guarantee against double jeopardy can hardly be doubted. Its origins can be traced to Greek and Roman times, and it became established in the common law of England long before this Nation's independence. As with many other elements of the common law, it was carried into the jurisprudence of this Country through the medium of Blackstone, who codified the doctrine in his Commentaries. "The plea of autrefois acquit, or a former acquittal," he wrote, "is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life more than once for the same offence." Today, every State incorporates some form of the prohibition in its constitution or common law. As this Court put it in *Green v. United States*, 355 U.S. 184, 187-188 (1957), "the underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." This underlying notion has from the very beginning been part of our constitutional tradition. Like the right to trial by jury, it is clearly "fundamental to the American scheme of justice."

Benton v. Maryland, 395 U.S. 784, 795-96 (1969) (some citations omitted).

In the half-century since *Abbate*, the judicial community has reluctantly followed what it generally recognizes as bad constitutional law—law that is not only unfair but makes no logical sense after *Benton*’s holding that the constitutional Double Jeopardy applies with full force to the states. *See, e.g., United States v. G.P.S. Automotive Corp.*, 66 F.3d 483, 499 (2d Cir. 1995) (Calabresi, J.) (“[A] new look by the High Court at the dual sovereignty doctrine and what it means today for the safeguards the Framers sought to place in the Double Jeopardy Clause would surely be welcome.”); *United States v. Grimes*, 641 F.2d 96, 100 (3d Cir. 1981) (collecting cases); *Turley v. Wyrick*, 554 F.2d 840, 845 (8th Cir. 1977) (Lay, J., concurring) (collecting criticism of the continuing validity of *Abbate* and “expressing dismay” at having to follow the decision, which the Supreme Court has not yet expressly overturned); *United States v. Treadway*, 312 F. Supp. 307, 310 (E.D. Va. Feb. 27, 1970) (“Does [*Benton*] overrule *Abbate*? By logic, it would seem so. What is sauce for the goose ought to be sauce for the gander.”).

Indeed, just last term, Justices Ginsburg and Thomas suggested that the Court should be on the lookout for a case—like this one—allowing the Court to re-visit Double Jeopardy in the context of successive federal and state prosecutions:

The double jeopardy proscription is intended to shield individuals from the harassment of multiple prosecutions for the same misconduct. *Green v. United States*, 355 U. S. 184, 187, 78 S. Ct. 221, 2 L. Ed. 2d 199, 77 Ohio Law Abs. 202 (1957). Current “separate sovereigns” doctrine hardly serves that objective. States and Na-

tion are “kindred systems,” yet “parts of ONE WHOLE.” The Federalist No. 82, p. 245 (J. Hopkins ed., 2d ed. 1802) (reprint 2008). Within that whole is it not “an affront to human dignity,” *Abbate v. United States*, 359 U. S. 187, 203, 79 S. Ct. 666, 3 L. Ed. 2d 729 (1959) (Black, J., dissenting), “inconsistent with the spirit of [our] Bill of Rights,” *Developments in the Law — Criminal Conspiracy*, 72 Harv. L. Rev. 920, 968 (1959), to try or punish a person twice for the same offense? Several jurists and commentators have suggested that the question should be answered with a resounding yes: Ordinarily, a final judgment in a criminal case, just as a final judgment in a civil case, should preclude renewal of the fray anywhere in the Nation. The matter warrants attention in a future case in which a defendant faces successive prosecutions by parts of the whole USA.

Puerto Rico v. Sánchez Valle, ___ U.S. ___, 136 S. Ct. 1863, 1877 (2016) (Ginsburg, J., concurring, joined by Thomas, J.).²

The question presented here is a critically important one and merits the Court’s attention.³

B. This Case Is a Good One for the Question Presented.

This case presents a good vehicle to reconsider the separate-sovereign exception to Double Jeopardy.

² Affording greater protection to the finality of mere civil judgments than to criminal ones is not only counterintuitive but also unfair. *Cf. United States v. Oppenheimer*, 242 U.S. 85, 87-88 (1916) (“It cannot be that the safeguards of the person, so often and so rightly mentioned with solemn reverence, are less than those that protect from a liability in debt.....”).

³ The Florida Association of Criminal Defense Lawyers – Miami Chapter filed an amicus brief to this Court in *Sánchez Valle* also urging the Court to abolish the Dual-Sovereign exception. *See Puerto Rico v. Sánchez Valle*, No. 15-108.

First, no question exists that Mr. Gordillo-Escandón properly preserved the issue. He timely raised Double Jeopardy before the district court and the court of appeals. [App. 1, 6].

Second, the Fifth Amendment is raised here as a check on the power of the federal government—the entire reason that the Framers added a Bill of Rights. Accordingly, the Court need not worry about whether the Fourteenth Amendment’s incorporation-to-the-States jurisprudence might require a different result when a prior federal prosecution is used as a defense to a state prosecution.

Finally, no dispute exists that the pending federal offenses are the same ones for constitutional purposes as those covered in the state convictions. The same-elements test set forth in *Blockburger v. United States*, 284 U.S. 299 (1932) normally governs when two offenses are constitutionally the same. That test “inquires whether each offense contains an element not contained in the other; if not, they are the ‘same offence’ and double jeopardy bars additional punishment and successive prosecution.” *United States v. Dixon*, 509 U.S. 688, 696 (1993). Another test does, however, exist that will also bar prosecutions not technically meeting the *Blockburger* test. Where the government seeks to prove one criminal offense by relitigating another offense, those two offenses are also the same for constitutional purposes. *E.g.*, *Illinois v. Vitale*, 447 U.S. 410, 421 (1980) (“[A] person who has been convicted of a crime having several elements included in it may not subsequently be tried for a lesser-included offense—an offense consisting solely of one or more of the elements of the crime

for which he has already been convicted.... The reverse is also true; a conviction on a lesser-included offense bars subsequent trial on the greater offense.” (citation omitted)). *See also Harris v. Oklahoma*, 433 U.S. 682, 682 (1977) (“When, as here, conviction of a greater crime, murder, cannot be had without conviction of the lesser crime, robbery with firearms, the Double Jeopardy Clause bars prosecution for the lesser crime after conviction of the greater one.” (citations omitted)).

As shown below, the state offenses to which Mr. Gordillo-Escandón has already pleaded guilty and his current federal offenses have overlapping elements and are thus the same offense for Double Jeopardy purposes:

21 U.S.C. § 841(a) / (b)

- The Defendant
- Knowingly (or intentionally)
- Possessed with intent to distribute
- A quantity (as charged 50g+)
- Methamphetamine

S.C. Code § 44-53-375(C)

- The Defendant
- Knowingly
- Possessed or attempted to deliver
- >10g but < 28g
- Methamphetamine

21 U.S.C. § 846

- The Defendant
- Conspired
- To possess with intent to distribute methamphetamine (or other drug offense)

S.C. Code § 44-53-375(C)

- The Defendant
- Conspired
- To possess or to deliver (more than 10g but less than 28g) of methamphetamine

18 U.S.C. § 924(c)(1)(A):

- The Defendant

S.C. Code § 16-23-20

- The Defendant

- Possessed
- A firearm
- In furtherance of a drug crime
- Carried about his person
- A handgun

This case is, accordingly, a good vehicle to reconsider *Abbate* and abandon the dual-sovereign exception to the Fifth Amendment's prohibition against Double Jeopardy.

CONCLUSION

For the forgoing reasons, this Court should grant the petition and reverse the Fourth Circuit's opinion and judgment below.

Dated: _____

Respectfully submitted,

MANUEL DE JESÚS GORDILLO-ESCANDÓN

Howard W. Anderson III
CJA Counsel for Petitioner

Howard W. Anderson III
 LAW OFFICE OF
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**Appendix to
Petition for *Writ of Certiorari***

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4481

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL DE JESUS GORDILLO-ESCANDON,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Bruce H. Hendricks, District Judge. (6:17-cr-00206-BHH-3)

Submitted: October 31, 2017

Decided: December 13, 2017

Before WYNN, DIAZ, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Howard W. Anderson III, LAW OFFICE OF HOWARD W. ANDERSON III, LLC, Pendleton, South Carolina, for Appellant. Beth Drake, United States Attorney, D. Josev Brewer, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Manuel de Jesus Gordillo-Escandon has been indicted in the District of South Carolina on federal drug and firearm offenses. Gordillo-Escandon, previously having been convicted on state drug and firearm charges, moved to dismiss the pending federal charges as violative of the Double Jeopardy Clause and the Full Faith and Credit Act, 28 U.S.C. § 1738 (2012). The district court denied the motion, finding that the successive prosecutions by separate sovereigns violated neither the Double Jeopardy Clause nor the Full Faith and Credit Act. Gordillo-Escandon then filed this interlocutory appeal pursuant to *Abney v. United States*, 431 U.S. 651, 662 (1977).

We review preserved claims concerning the Double Jeopardy Clause de novo. *United States v. Schnittker*, 807 F.3d 77, 81 (4th Cir. 2015). The protection against double jeopardy “prohibits the government from subjecting a person to multiple punishments for the same offense.” *Id.* (internal quotation marks omitted). However, under the dual sovereignty doctrine, “the Supreme Court has continually held that federal and state crimes are not the same offense, no matter how identical the conduct they proscribe.” *United States v. Alvarado*, 440 F.3d 191, 196 (4th Cir. 2006) (internal quotation marks omitted); see *Abbate v. United States*, 359 U.S. 187, 194-96 (1959) (declining to overrule established principle “that a federal prosecution is not barred by a prior state prosecution of the same person for the same acts”). As Gordillo-Escandon concedes, his double jeopardy claim could have merit only if the Supreme Court overturned its decision in *Abbate*. Because *Abbate* remains good law, Gordillo-Escandon’s claim must fail.

The Full Faith and Credit Act requires federal courts to apply state res judicata law to determine the preclusive effects of a state court judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005); *In re Genesys Data Techs., Inc.*, 204 F.3d 124, 129 (4th Cir. 2000). “Under South Carolina law, to establish res judicata a party must show (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Sunrise Corp. v. City of Myrtle Beach*, 420 F.3d 322, 327 (4th Cir. 2005) (internal quotation marks omitted). We have held that “[t]he federal government is neither the same as nor in privity with the [s]tate [government] and therefore is not barred” by the doctrine of collateral estoppel. *United States v. Smith*, 446 F.2d 200, 202 (4th Cir. 1971). Accordingly, we conclude that Gordillo-Escandon fails to meet the requirements for res judicata under South Carolina law and, therefore, his claim under the Full Faith and Credit Act must fail.

Based on the foregoing, we affirm the district court’s denial of Gordillo-Escandon’s motion to dismiss the pending federal indictment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

1 Mr. Anderson is asking in this case, it would actually
2 operate as an automatic adjudication of guilt
3 essentially against Mr. Gordillo-Escandon because we
4 have sn underlying guilty plea in the State. So, if
5 Your Honor was to actually extend Full Faith and Credit
6 in the way asked, Your Honor the Government would
7 respectfully recommend it would be an outcome he doesn't
8 want. But that is not the status of the law and that is
9 not certainly what the Government would be proposing,
10 Your Honor.

11 THE COURT: Okay. Well, thank you, everybody.

12 MR. ANDERSON: Judge, if I could just respond to
13 one thing. It is my understanding that the plea offer
14 that the Solicitor made in State court had an expiration
15 date on it. And there was no guarantee that after the
16 expiration date that it would ever be revived. And I
17 think that it is because of that that rather than roll
18 the dice and hope that if you got an acquittal here that
19 the offer would be revived, it is my understanding that
20 that was the reason for going forward in State court was
21 because of the expiration date of the offer.

22 THE COURT: I appreciate that and I understand.
23 Thank you for that. Thanks to both parties for your
24 great briefing and argument on this. It was very
25 succinct and the fact of writing, the Court will now go

1 ahead and rule and of course reserve the right to place
2 written findings and conclusions on the record at any
3 time.

4 The motion to dismiss the indictment with
5 prejudice is denied. The Defendant seeks dismissal of
6 the indictment pending currently on two bases: One,
7 undue delay; and two, dual prosecution in State court,
8 which prosecution has already resulted in conviction and
9 sentencing. The relevant facts are not in dispute and
10 the issues presented today are purely legal.

11 With respect to the alleged undue delay, the
12 Court finds, first, that there has been no violation of
13 the Speedy Trial Act in this matter. The Defendant's
14 counsel joined in a continuance request on May 23rd,
15 2017, prior to the expiration of the speedy trial clock,
16 which that request was granted for the ends of justice
17 and more specifically for the effective preparation of
18 counsel; therefore, the period of delay resulting from
19 the continuance is excludable under 18, United States
20 Code, Section 3161(h).

21 As convincingly briefed by the Government, the
22 Fourth Circuit holding in *United States versus Keith*
23 provides effective reasoning for why a Defendant in
24 asserting a Speedy Trial Act violation should not be
25 able to take advantage of the period of time covered by

1 a continuance after having requested that continuance
2 and after having been granted the continuance for the
3 ends of justice.

4 Second, the Court finds that no Rule 48(b)
5 dismissal is merited in this case. In making his Rule
6 48(b) arguments, Defendant recites some unspecified and
7 unexplained delay in pressing Federal charges.

8 Concerning pre-indictment delay, there was none. The
9 Government has effectively shown that the case was
10 indicted at the session of the grand jury immediately
11 following the date on which agents with the Department
12 of Homeland Security brought the case to the United
13 States Attorney's Office for consideration.

14 Concerning post-indictment delay, there has been
15 one continuance in this case on Defendant's own motion,
16 as already discussed. And more importantly, Defendant
17 has not shown any prejudice he might have suffered from
18 alleged undue delay and 48(b) dismissal is not justified
19 in this case. Also the Court would bring the party's
20 attention to *United States versus Automated Med. Labs.,*
21 *Inc.*, at 770 F.2d 399.

22 With respect to dual prosecution, the Court
23 finds first that continued Federal prosecution does not
24 violate the Fifth Amendment's double jeopardy clause.
25 The well-known Dual Sovereignty Doctrine applies here

1 and the case cited by the Defendant in support of his
2 double jeopardy arguments actually reaffirms the
3 permissibility of separate prosecutions by different
4 sovereigns for the same conduct.

5 And you might find some further authority for
6 that point at *Puerto Rico versus Sanchez Valle* at 136
7 Supreme Court 1863. This is not to say that
8 Defendant's counsel is inept in raising the issue as he
9 was validly pursuing his professional duties to his
10 client and may indeed subjectively believe that Dual
11 Sovereignty Doctrine is unfair fundamentally. It is
12 only to say that at this point it is still settled law
13 that parallel prosecutions by State and Federal
14 Governments, even for the same underlying conduct, raise
15 no specter of a double jeopardy violation.

16 Second, the Court finds that continued Federal
17 prosecution of this case does not constitute a violation
18 of the Full Faith and Credit Act, Section 1738, Title
19 28, United States Code amended in 1948 requires Federal
20 courts to give to State judicial proceedings the same
21 Full Faith and Credit as they have by law or usage in
22 the Courts of such state. The Defendant pled guilty in
23 State court to the conduct underlying the Federal
24 charges pending here. Ironically, the logical
25 consequences of applying this Full Faith and Credit

1 argument to the Defendant's State court judgment would
2 be to require a guilty finding in this Court, not as
3 Defendant suggests to prohibit Federal prosecution. Of
4 course, no one is proposing such an outcome as it would
5 offend bedrock principles of the presumption of
6 innocence. But, suffice it to say, the Full Faith and
7 Credit Act does not compel any outcome as between
8 separate sovereigns and successive criminal
9 prosecutions. If it did, the dual sovereignty doctrine
10 would have been invalidated long ago. It has not been
11 invalidated and this basis for the Defendant's motion
12 lacks merit. So, accordingly, Defendant's motion to
13 dismiss the indictment with prejudice is hereby denied.

14 Does either party have anything they would like
15 to add?

16 MR. ANDERSON: Judge, I just, for the record,
17 according to SCDC, my client is eligible for parole at
18 the end of December of this year and his projected
19 release date is October 18th for his max out sentence.
20 And knowing, you know, in the hopes that I am right
21 about convincing Justice Ginsburg that -- in hoping that
22 she can convince her colleagues on the Court to agree
23 with here through her persuasive rhetoric and just
24 knowing how long that process takes, I would ask Your
25 Honor to go ahead and set a firm trial date in this case

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA)	CR. NO.: <u>6:17CR206</u>
	)	21 U.S.C. § 841(a)(1)
	)	21 U.S.C. § 841(b)(1)(B)
	)	21 U.S.C. § 841(b)(1)(C)
	)	21 U.S.C. § 846
vs.	)	18 U.S.C. § 2
	)	18 U.S.C. § 924(d)
	)	18 U.S.C. § 924(c)(1)(A)
	)	18 U.S.C. § 924(d)
	)	21 U.S.C. § 853
DIEGO JAVIER BELTRAN	)	21 U.S.C. § 881
FERMIN MATA-BUSTOS , aka "Gato"	)	28 U.S.C. § 2461(c)
MANUEL DE JESUS GORDILLO-)	
ESCANDON)	
SAVANNAH ROSE SCHWARZ	)	<u>INDICTMENT</u>

REC
 USDC CLERK
 2017 MAR 14 2:30

COUNT 1

THE GRAND JURY CHARGES:

That beginning at a time unknown to the Grand Jury, but beginning at least in 2016, and continuing thereafter, up to and including the date of this Indictment, in the District of South Carolina and elsewhere, the Defendants, **DIEGO JAVIER BELTRAN**, **FERMIN MATA-BUSTOS**, aka "Gato," **MANUEL DE JESUS GORDILLO-ESCANDON**, and **SAVANNAH ROSE SCHWARZ**, knowingly and intentionally did combine, conspire, agree and have tacit understanding with each other and with others, both known and unknown to the Grand Jury, to possess with intent to distribute and to distribute methamphetamine, a Schedule II controlled substance;

1. With respect to **DIEGO JAVIER BELTRAN**, the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, is 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B);

2. With respect to **FERMIN MATA-BUSTOS**, aka “Gato,” the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, is 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B);

3. With respect to **MANUEL DE JESUS GORDILLO-ESCANDON**, the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, is 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B);

4. With respect to **SAVANNAH ROSE SCHWARZ**, the amount involved in the conspiracy attributable to her as a result of her own conduct, and the conduct of other conspirators reasonably foreseeable to her, is a quantity of a detectable amount of methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C);

All in violation of Title 21, United States Code, Section 846.

COUNT 2

THE GRAND JURY FURTHER CHARGES:

On or about December 28, 2016, in the District of South Carolina, the Defendants, **DIEGO JAVIER BELTRAN, FERMIN MATA-BUSTOS**, aka “Gato,” and **MANUEL DE JESUS GORDILLO-ESCANDON**, knowingly, intentionally, and unlawfully did possess with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, and did aid and abet each other in the commission of the aforesaid offense;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B), and Title 18, United States Code, Section 2.

COUNT 3

THE GRAND JURY FURTHER CHARGES:

On or about December 28, 2016, in the District of South Carolina, the Defendant, **SAVANNAH ROSE SCHWARZ**, knowingly, intentionally, and unlawfully did possess with intent to distribute a quantity of methamphetamine, a Schedule II controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 4

THE GRAND JURY FURTHER CHARGES:

On or about December 28, 2016, in the District of South Carolina, the Defendants, **DIEGO JAVIER BELTRAN, FERMIN MATA-BUSTOS**, aka “Gato,” and **MANUEL DE JESUS GORDILLO-ESCANDON**, knowingly did possess firearms, that is two (2) Glock G-19 9mm handguns in furtherance of a drug trafficking crime, which is prosecutable in a court of the United States, and did aid and abet each other in the commission of the aforesaid offense;

In violation of Title 18, United States Code, Section 924(c)(1)(A), and Title 18, United States Code, Section 2.

FORFEITURE

FIREARM/DRUG OFFENSES:

Upon conviction for felony violations of Title 18 and 21, United States Code as charged in this Indictment, the defendants, **DIEGO JAVIER BELTRAN**, **FERMIN MATA-BUSTOS**, aka “Gato,” **MANUEL DE JESUS GORDILLO-ESCANDON**, and **SAVANNAH ROSE SCHWARZ**, shall forfeit to the United States all of the defendants’ right, title and interest in and to any property, real and personal,

- (a) constituting, or derived from any proceeds the defendants obtained, directly or indirectly, as the result of such violation(s) of Title 21, United States Code, and all property traceable to such property;
- (b) used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violations of Title 21, United States Code;
- (c) any firearms and ammunition (as defined in 18 U.S.C. § 921) –
 - (1) used or intended to be used to facilitate the transportation, sale, receipt, possession or concealment of controlled substances or any proceeds traceable to such property;
 - (2) involved in or used in any knowing violations of 18 U.S.C. §§ 922 and 924, or violation of any other criminal law of the United States, or intended to be used in a crime of violence;

PROPERTY:

Pursuant to Title 18, United States Code, Section 924(d), Title 21, United States Code, Sections 853 and 881, and Title 28, United States Code, Section 2461(c), the property which is subject to forfeiture upon conviction of the defendants for offenses charged in this Indictment includes, but is not limited to, the following:

A. Proceeds/Money Judgment:

A sum of money equal to all property the Defendants obtained as a result of the drug offenses charged in the Indictment, and all interest and proceeds traceable thereto as a result for their violations of 21 U.S.C. §§ 841 and 846, which the defendants are jointly and severally liable.

B. Firearms and ammunition:

1. Glock G-19 9mm handgun
Serial number Unknown
2. Glock G-19 9mm handgun
Serial number Unknown
3. Smith & Wesson .40 caliber, model SD40VE
Serial number FYU7195
4. Miscellaneous rounds of ammunition

SUBSTITUTION OF ASSETS:

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) to seek forfeiture of any other property of defendants up to an amount equivalent to the value of the above-described forfeitable property;

Pursuant to Title 18, United States Code, 924(d), Title 21, United States Code, Sections 853 and 881, and Title 28, United States Code, Section 2461(c).

A True Bill

REDACTED
FOREPERSON


BETH DRAKE (DJB/twd)
UNITED STATES ATTORNEY



DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

OFFICIAL USE ONLY | LAW ENFORCEMENT SENSITIVE



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Page 1 of 3

CASE NUMBER

GV13WS17GV0002

CASE OPENED

12/30/2016

CURRENT CASE TITLE

Diego BELTRAN, et. al.

REPORT TITLE

Opening Report / Arrest of 4 Subjects
/ Seizure of Methamphetamine and
Handguns

SYNOPSIS

In December 2016, Homeland Security Investigations (HSI) /Greenville, SC, received a request for assistance from the Union County Sheriff's Office (UCSO) and the Greenville County Sheriff's Office (GCSO) regarding Diego BELTRAN. According to the UCSO and the GCSO, BELTRAN and 3 additional subjects, identified as Fermin MATA-BUSTOS aka "Gato", Manuel De Jesus GORDILLO-ESCONDON, and Savannah SCHWARZ, are actively involved in the trafficking of methamphetamine from Mexico to the Upstate area of South Carolina via Atlanta, GA.

The following Report of Investigation (ROI) details the events leading to the arrest of the 4 subjects and the seizure of methamphetamine and handguns by law enforcement.

REPORTED BY

Paul Criswell

SPECIAL AGENT

APPROVED BY

Christopher Murphy

RESIDENT AGENT IN CHARGE

DATE APPROVED

1/30/2017

Current Case Title

Diego BELTRAN, et. al.

ROI Number

GV13WS17GV0002-001

Date Approved

1/30/2017

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Appendix 016

BELTRAN000123



DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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Page 2 of 3

DETAILS OF INVESTIGATION

In December 2016, Homeland Security Investigations (HSI)/Greenville, SC, received a request for assistance from the Union County Sheriff's Office (UCSO) and the Greenville County Sheriff's Office (GCSO) regarding Diego BELTRAN. According to the UCSO and the GCSO, BELTRAN and 3 additional subjects, identified as Fermin MATA-BUSTOS aka "Gato", Manuel De Jesus GORDILLO-ESCANDON, and Savannah SCHWARZ, are actively involved in the trafficking of methamphetamine from Mexico to the Upstate area of South Carolina via Atlanta, GA.

The following Report of Investigation (ROI) details the events leading to the arrest of the 4 subjects and the seizure of methamphetamine and handguns by law enforcement. The following Report of Investigation (ROI) is in summary of the events surrounding the arrests and seizures.

On December 28, 2016, the UCSO conducted an undercover narcotics operation involving the prospective purchase of approximately 1 ounce of methamphetamine from a Hispanic male (BELTRAN) from Greenville, SC. A UCSO Confidential Source (CS) brokered the purchase of the methamphetamine at the direction of the UCSO. The UCSO established surveillance at a business location in anticipation of the undercover purchase; however, BELTRAN never arrived at the meeting location. UCSO Lt. Johnny Sherfield then conducted surveillance in the vicinity of Cross Keys Highway and observed a Pontiac Terrain (GA / RAC0093) wrecked in a ditch. Lt. Sherfield encountered the driver, BELTRAN, and determined BELTRAN was the subject who was allegedly delivering the methamphetamine to the CS. Additional UCSO personnel arrived at the location and observed a young female, identified as Savannah SCHWARZ, exit the wood line near the wrecked vehicle. A probable cause search of the vehicle resulted in the discovery of a quantity of marijuana and methamphetamine. A search of the wood line resulted in the discovery of approximately 5 ounces of suspected methamphetamine. UCSO investigators arrested BELTRAN and SCHWARZ for violations of South Carolina state drug laws.

- **(AGENT'S NOTE:** *BELTRAN was previously identified as a methamphetamine distributor as part of an on-going State Law Enforcement Division (SLED) narcotics conspiracy investigation. Additionally, SCHWARZ was previously identified by the GCSO and HSI Greenville as a possible victim of human trafficking.)*

On the same date, BELTRAN informed UCSO Lt. Sherfield and Sgt. Jared Gilstrap of his willingness to cooperate with law enforcement. According to BELTRAN, 2 Hispanic males, later identified as Fermin MATA-BUSTOS aka "Gato" and Manuel De Jesus GORDILLO-ESCANDON, had traveled from Atlanta, GA, to Greenville, SC, on the same date and delivered approximately 10 ounces of methamphetamine to him (BELTRAN). BELTRAN stated MATA-BUSTOS and GORDILLO-ESCANDON were currently at the Baymont Inn & Suites, 246 Congaree Road, Room 221, Greenville, SC. BELTRAN stated there was

Current Case Title

Diego BELTRAN, et. al.

ROI Number

GV13WS17GV0002-001

Date Approved

1/30/2017

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Appendix 017

BELTRAN000124



DEPARTMENT OF HOMELAND SECURITY

HOMELAND SECURITY INVESTIGATIONS

REPORT OF INVESTIGATION

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approximately 5 ounces of methamphetamine in the room and both MATA-BUSTOS and GORDILLO-ESCANDON were armed. BELTRAN stated he had just left the room to deliver the methamphetamine in the vehicle driven from Atlanta by MATA-BUSTOS and GORDILLO-ESCANDON. Additionally, BELTRAN provided law enforcement with a room key for Room 221.

On the same date, Sgt. Gilstrap contacted HSI SA Paul Criswell and requested assistance with furthering the investigation in the Greenville, SC, area. SA Criswell agreed to assist and began coordinating with GCSO Sgt. Marcus Cannon for a possible state search warrant to be executed at the hotel room occupied by MATA-BUSTOS and GORDILLO-ESCANDON. Additionally, BELTRAN provided law enforcement with cellular telephone number [REDACTED] for MATA-BUSTOS.

- **(AGENT'S NOTE:** *On the same date, the aforementioned cellular telephone for MATA-BUSTOS was entered into a de-confliction database and was identified as a Priority One number by a DEA Atlanta investigation dated September 13, 2016. On the same date, SA Criswell attempted to contact the DEA Atlanta case agents via email and telephone for de-confliction purposes. SA Criswell did not receive a response from either DEA Atlanta case agent. On the same date, HSI SA Wayne Wright contacted DEA Greenville RAC Mike Rzepczynski and informed DEA Greenville of the possible conflict and HSI Greenville's attempts to contact DEA Atlanta.)*

On the same date, GCSO investigators obtained a state search warrant for Baymont Inn & Suites, 246 Congaree Road, Room 221, Greenville, SC. Pre-surveillance at the location identified the room as being occupied by 2 Hispanic males (MATA-BUSTOS and GORDILLO-ESCANDON). GCSO investigators, with assistance from HSI Greenville, executed the search warrant at the location and arrested MATA-BUSTOS and GORDILLO-ESCANDON. A search of the room resulted in the discovery and seizure of 2 Glock G-19 9mm handguns (on the beds with MATA-BUSTOS and GORDILLO-ESCANDON) and approximately 5 ounces of methamphetamine secreted inside of a paper cup. MATA-BUSTOS and GORDILLO-ESCANDON were arrested for violations of South Carolina state drug laws and all contraband was remitted to the GCSO Property and Evidence (P&E) for evidentiary purposes.

Investigation continues.

Current Case Title

Diego BELTRAN, et. al.

ROI Number

GV13WS17GV0002-001

Date Approved

1/30/2017

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Appendix 018

BELTRAN000125

Exhibit C

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

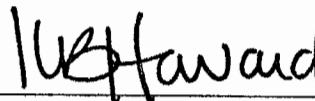
COUNT I

That MANUEL DE JESUS GORDILLO-ESCANDON did in Greenville County, on or about the 28th day of December, 2016, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 100 grams but less than 200 grams of Methamphetamine (Crank). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That MANUEL DE JESUS GORDILLO-ESCANDON did in Greenville County, on or about the 28th day of December, 2016, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Trafficking Methamphetamine. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

BAR # 73639

Exhibit D

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Manuel De Jesus Gordillo-Escandon

AKA:

Race: HISPANIC Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Norcross, GA 30093DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Trafficking in Methamphetamine 710g < 28g.in violation of § 44-53-0375(C)(3) of the S.C. Code of Laws, bearing CDR Code # 0368☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC 0450 (16)w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. MG (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Howard, Kimberly Boan

73639

SC Bar#

Defendant

ROSS, SUSANNAH

11205

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections,☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with

probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections. 164 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 825

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter: Jerkins

SCCA/217 (07/2016)

Paul B. Wiseman

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2017-0152 3036A/W#: 2016A2330211859Date of Offense: 12/28/2016S.C. Code § : 44-53-0375(C)(3)CDR Code #: 0368

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Manuel De Jesus Gordillo-Escandon

AKA:

Race: HISPANIC Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Norcross, GA 30093DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of weapon during violent crime Unlawful Carrying of Weapon (103)in violation of § 16-23-0490 0020 (103) of the S.C. Code of Laws, bearing CDR Code # 0549 0044 (103)☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. MG (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: 103 Howard

Howard, Kimberly Boan

73639
SC Bar#

Defendant

ROSS, SUSANNAH

11205
SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections,☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the

Youthful Offender Act

not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. 104 DAYS☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Jenkins

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2130Sentence Date: 6-12-17

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.