

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 1:18-cr-15-AW-GRJ

JUSTIN LEWIS,

Defendant.

ORDER DENYING MOTION TO DISMISS

A jury convicted Justin Lewis of six counts of wire fraud. Now proceeding pro se, he asks the court to dismiss the case based on the Fifth Amendment's Double Jeopardy Clause. ECF No. 320. Lewis contends that an earlier order "acquitted him of all charges in the Northern District." ECF No. 320 at 1. He cites ECF No. 191, which he says granted that relief. But Lewis misunderstands that order. That order granted his former attorney's motion to withdraw, and it struck Lewis's pro se filing (ECF No. 187). ECF No. 191.

Lewis's confusion likely comes from the clerk's docket language, which currently shows this:

191	ORDER GRANTING <u>187</u> MOTION TO WITHDRAW AND STRIKING FILING as to JUSTIN LEWIS (1) signed by JUDGE ALLEN C WINSOR on 4/23/20. Motion <u>187</u> is granted, and Mr. Maro is relieved of further responsibility. The clerk will also terminate ECF No. <u>175</u> . Defendant Lewiss <u>187</u> Motion for Reconsideration is stricken because he was represented when he filed it. (tss) (Entered: 04/23/2020)
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Appendix A

The “motion to withdraw” was ECF No. 190—not 187. But that docket language is not what matters. The order itself is what matters. And the order did not dismiss any charges. There was no order acquitting Lewis of the charges, and the conviction does not present a Double Jeopardy issue.

Lewis’s motion (ECF No. 320) is DENIED.

SO ORDERED on November 1, 2021.

s/ Allen Winsor
United States District Judge

Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13893-AA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUSTIN LEWIS,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Florida

Before: JORDAN, BRANCH, and BRASHER, Circuit Judges.

BY THE COURT:

The government's motion to dismiss this appeal for lack of jurisdiction is GRANTED. Justin Lewis appeals the district court's denial of his motion to dismiss pursuant to the Double Jeopardy Clause of the Fifth Amendment. However, Mr. Lewis's double jeopardy claim is not colorable because, despite his claims to the contrary, the district court never acquitted him of any charges. Accordingly, the district court's order denying Mr. Lewis's motion to dismiss on double jeopardy grounds is not immediately appealable. *See Richardson v. United States*, 468 U.S. 317, 322, 326 n.6 (1984) ("[W]e have indicated that the appealability of a double jeopardy claim depends upon its being at least 'colorable[']'"); *United States v. Bobo*, 419 F.3d 1264, 1267 (11th

Appendix B

Cir. 2005).

All other pending motions are DENIED as moot.

Appendix B

No. 22-12624-F

JURISDICTIONAL QUESTION

Please address whether the district court's denial of Lewis's "Emergency Motion to Dismiss," (*see* Docs. 283, 294), was a final or otherwise immediately appealable decision, *see United States v. Bobo*, 419 F.3d 1264, 1266-67 (11th Cir. 2005) (stating that this Court has jurisdiction to review colorable, non-frivolous double jeopardy claims prior to final judgment); *United States v. Kirk*, 781 F.2d 1498, 1501 n.2 (11th Cir. 1986) (stating the denial of an interlocutory motion to suppress evidence is not appealable by the defendant).

Appendix C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-12624-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUSTIN LEWIS,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

The untimely motion for extension of time in which to file Appellant's brief is
GRANTED.

Appellant's brief is due within fourteen days from the date of this Order.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

Appendix D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-12624-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUSTIN LEWIS,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON, LUCK, and LAGOA, Circuit Judges.

BY THE COURT:

Upon review of the record and the parties' responses to the jurisdictional questions, this appeal is DISMISSED for lack of jurisdiction. Justin Lewis appeals the district court's denial of his emergency motion to dismiss the indictment pursuant to the Double Jeopardy Clause of the Fifth Amendment. However, Lewis's double jeopardy claim is not colorable because, despite his claims to the contrary, his prior conviction for wire fraud under 18 U.S.C. § 1343 does not bar his current prosecution under 18 U.S.C. § 2252A(a)(5)(B), as wire fraud and possession of child pornography are separate offenses involving entirely separate conduct. *See* 18 U.S.C. §§ 1343, 2252A(a)(5)(B); *Blockburger v. United States*, 284 U.S. 299, 304 (1932); *United States v. Bobb*, 577 F.3d 1366, 1372 (11th Cir. 2009); *Iannelli v. United States*, 420 U.S. 770, 785 n.17 (1975) (noting that the *Blockburger* test may be satisfied "notwithstanding a substantial overlap in the

Appendix D

proof offered to establish the crimes”). Accordingly, the district court’s order denying Lewis’s motion to dismiss on double jeopardy grounds is not immediately appealable. *See Richardson v. United States*, 468 U.S. 317, 322, 326 n.6 (1984) (“[W]e have indicated that the appealability of a double jeopardy claim depends upon its being at least ‘colorable’”); *United States v. Bobo*, 419 F.3d 1264, 1267 (11th Cir. 2005).

Appendix D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA

VS.

CASE NO. 5:19-cr-5-JA-PRL

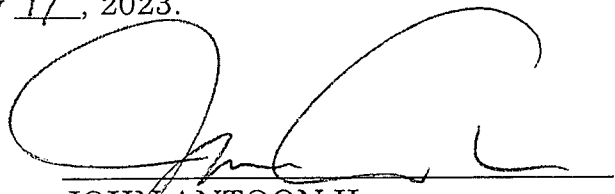
JUSTIN LEWIS

ORDER

THIS CAUSE is before the Court on Defendant Justin Lewis' Motion to Dismiss the Indictment Pursuant to Multiple Violations of the Constitution of the United States Fifth Amendments Double Jeopardy Clause (Doc. No. 386, filed May 12, 2023.)

It is **ORDERED** and **ADJUDGED** that the Defendant's Motion to Dismiss (Doc. No. 386) is **DENIED**.

DONE and **ORDERED** on May 17, 2023.


JOHN ANTOON II
United States District Judge

Copies furnished to:
United States Attorney
Justin Lewis

Appendix E

No. 23-11915-B

JURISDICTIONAL QUESTION

Please address whether the district court's order denying Appellant's motion to dismiss the indictment pursuant to multiple violations of the Double Jeopardy Clause is final or immediately appealable. *See* 28 U.S.C. § 1291 (providing this Court with jurisdiction to review final decisions of the district courts); *Flanagan v. United States*, 465 U.S. 259, 263 (1984) (providing that in criminal cases, the rule of finality generally prohibits appellate review until conviction and imposition of sentence); *United States v. Shalhoub*, 855 F.3d 1255, 1260 (11th Cir. 2017) (noting that an order is immediately appealable under the collateral order doctrine if it: (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from and collateral to the merits of the action; and (3) would be effectively unreviewable on appeal from the final judgment); *United States v. Bobo*, 419 F.3d 1264, 1266-67 (11th Cir. 2005) (explaining that the interlocutory denial of a colorable, non-frivolous double jeopardy claim is immediately appealable under the collateral order doctrine).

Appendix F