

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

QUIYONTAY SANDERS,

Defendant.

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CIVIL ACTION NO.
1:15-CR-250-LMM

ORDER

This case comes before the Court on Defendant’s Motion to Dismiss Indictment for Violation of the Double Jeopardy Clause [44]. After a review of the record and due consideration, the Court enters the following Order.

On April 26, 2013, Defendant was arrested for a probation violation by the U.S. Marshals Fugitive Task Force-Counter Gang Unit (USMFTFCGU) and a firearm was found. On May 3, 2013, a Fulton County grand jury returned an indictment, charging Defendant with a single count of possession of a firearm by a convicted felon, O.C.G.A. § 16-11-131. Dkt. No. [44-1]. On May 30, 2013, Defendant pled guilty to the firearm charge in Fulton County Superior Court and received a five-year sentence, with Defendant to serve eight months and probate the remainder. Dkt. No. [44-2].

On July 7, 2015, Defendant was indicted in this matter with a single count of a felon in possession of a firearm, 18 U.S.C. § 922(g)(1), based on his April 26, 2013 conduct. Dkt. No. [1]. The Government maintains that it sought a federal indictment “[b]ecause of the seriousness of the offense; Defendant’s prior history of violence; [] Defendant’s known ties to the Good Fellas gang,” and “the abbreviated sentence” he obtained in Fulton County, Georgia. Dkt. No. [46] at 2. Defendant argues that this action is barred by the Double Jeopardy Clause of the Fifth Amendment because the Government seeks to punish him twice for the same conduct—that is, his April 26, 2013 firearm possession.

The Double Jeopardy Clause of the Fifth Amendment provides, “No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb;” “ That guarantee has been said to consist of three separate constitutional protections. It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.” N. Carolina v. Pearce, 395 U.S. 711, 717 (U.S. 1969) (footnotes omitted) overruled on other grounds by Alabama v. Smith, 490 U.S. 794 (1989).

As Defendant acknowledges, the Supreme Court has held that, under the dual sovereignty doctrine, State and federal governments may independently prosecute a criminal defendant for the same event because they derive their power from different sources. Heath v. Alabama, 474 U.S. 82, 89 (1985) (“the Court has uniformly held that the States are separate sovereigns with respect to

the Federal Government because each State's power to prosecute is derived from its own 'inherent sovereignty,' not from the Federal Government.”). That is because when conduct violates the “peace and dignity” of two different sovereigns, the defendant has committed two “offenses” under the Clause. United States v. Lanza, 260 U.S. 377, 382 (1922) (“It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.”).

This doctrine was recently confirmed by the Supreme Court in Puerto Rico v. Sanchez Valle, ___ U.S. ___, 136 S. Ct. 1863 (2016). There, in deciding that a criminal defendant could not be prosecuted by both the federal and Puerto Rican governments—because “the oldest roots of Puerto Rico’s power to prosecute lie in federal soil”—the Court reaffirmed that a criminal defendant *could* be prosecuted by both federal and State governments, as Defendant acknowledges. Id. at 1868.

[T]he States are separate sovereigns from the Federal Government (and from one another). The States' “powers to undertake criminal prosecutions,” we have explained, do not “derive[] . . . from the Federal Government.” Instead, the States rely on “authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment.” Said otherwise: Prior to forming the Union, the States possessed “separate and independent sources of power and authority,” which they continue to draw upon in enacting and enforcing criminal laws. State prosecutions therefore have their most ancient roots in an “inherent sovereignty” unconnected to, and indeed pre-existing, the U.S. Congress.

Sanchez Valle, 136 S. Ct. at 1871 (citations omitted). While Defendant argues that this theory is “open to reexamination and doubt,” there is no doubt that the dual

sovereignty doctrine is well-settled and applies here. Dkt. No. [44] at 6. The federal government and Georgia may independently prosecute Defendant for the same underlying transaction.

Defendant additionally argues that even if the dual sovereignty doctrine applies, the “sham prosecution” exception to the Double Jeopardy clause would bar his federal prosecution. Defendant argues that because USMFTFCGU—federal agents—arrested Defendant and their work “was the entire basis for both the state prosecution and the federal prosecution,” the two sovereigns should be treated as one in the double jeopardy analysis. Dkt. No. [44] at 13-15.

The Eleventh Circuit has held that *if* a “sham prosecution” exception exists to the dual sovereignty doctrine, “that exception requires a showing that one sovereign controlled, dominated, or manipulated the *prosecution* of the defendant by the other.” United States v. Baptista-Rodriguez, 17 F.3d 1354, 1362 (11th Cir. 1994) (emphasis in original). The Circuit has noted, “To be sure, investigation and apprehension usually are necessary predicates to the punishment of criminals. But prosecution is the formal act by which the government seeks that punishment. Independent sovereigns do not forfeit their right to charge and punish violations of their own laws because *some other sovereign had the resources and separate interest to investigate the crimes and expose the criminals.*” Id. at 1362 (emphasis added).

This is not a sham prosecution. There is no evidence that the United States manipulated or otherwise dominated the State’s prosecution. The Marshals did

investigate the matter initially—because they found the gun while trying to effectuate an arrest warrant for Defendant’s probation violation. But the Marshals subsequently took Defendant and the gun to the State authorities and did not have further involvement in the State prosecution. Defendant cites no authority for the proposition that the United States cannot pursue charges *after* a State merely because it conducted the on-scene investigation. That is for good reason—Baptista-Rodriguez suggests otherwise.

Rather than directing the State prosecution, the record actually reflects that the United States is pursuing this case because of its dissatisfaction with Defendant’s State sentence—a fact which also undermines Defendant’s theory that the United States orchestrated his State conviction.

As this court finds the Double Jeopardy clause is not violated by this federal indictment, Defendant’s Motion [44] is **DENIED**.

IT IS SO ORDERED this 2nd day of August, 2016.


LEIGH MARTIN MAY
UNITED STATES DISTRICT JUDGE