

Appendix B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12305-EE

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODNEY DEWAYNE SMITH,

Defendant-Appellant.

Appeals from the United States District Court
for the Northern District of Alabama

Before: MARTIN, JULIE CARNES and JILL PRYOR, Circuit Judges.

BY THE COURT:

Rodney Dewayne Smith appeals the district court's order denying his motion to dismiss his indictment based on a violation of the Double Jeopardy Clause of the Fifth Amendment. He argues that the "dual-sovereignty doctrine" should be overturned. The government has moved for summary affirmance, or alternatively, to stay the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158,

1162 (5th Cir. 1969).

We review *de novo* a district court's denial of a motion to dismiss based on double jeopardy grounds. *United States v. Benefield*, 874 F.2d 1503, 1505 (11th Cir. 1989). While the Double Jeopardy Clause of the Fifth Amendment prohibits multiple prosecutions for the same "offence," the Supreme Court has held that, under the "dual-sovereignty doctrine," when an act violates the law of two separate sovereigns, it gives rise to two offenses. *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1867 (citing *Abbate v. United States*, 359 U.S. at 187, 196 (1959)). In *Sanchez Valle*, Justice Ginsburg authored a concurrence, which Justice Thomas joined, in which she opined that the dual-sovereignty doctrine "bears fresh examination in an appropriate case," where "a defendant faces successive prosecutions by parts of the whole USA." *Id.* at 1877 (Ginsburg, J. concurring). We have recognized that only the Supreme Court can overturn its prior decisions. *Muhammad v. Sec'y, Fla. Dep't of Corr.*, 733 F.3d 1065, 1074 (11th Cir. 2013).

Here, the government is clearly right as a matter of law. See *Groendyke Transp.*, 406 F.2d at 1162. The district court was, and we are, bound by Supreme Court precedent holding that state and federal prosecutions based on the same conduct do not violate double jeopardy, and Smith's argument is therefore foreclosed. See *Sanchez Valle*, 136 S. Ct. at 1867. Accordingly, the government's motion for summary affirmance is GRANTED and its motion to stay the briefing schedule is DENIED as moot.