

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-342(1) (ECT/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIONDRE MAURICE OTTO STATELY,

Defendant.

**RESPONSE TO DEFENDANT’S
MOTION TO DISMISS FOR
CONSTITUTIONAL
VIOLATIONS**

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Gina L. Allery, Special Assistant United States Attorney, hereby submits its response to the defendant’s memorandum in support of motion to dismiss for constitutional violations. For the reasons set forth below, the government respectfully requests that the Court deny the defendant’s motion.

I. Background

The defendant, Diondre Maurice Otto Stately, is charged by Indictment with Robbery, in violation of Title 18, United States Code, Sections 2, 1151, and 1153(a), 2111. [Dkt. No. 1.] The defendant is alleged to have committed a robbery on September 21, 2019, within the exterior boundaries of the Red Lake Indian Reservation. On February 5, 2020, the defendant filed pretrial motions, including defendant’s motion to suppress evidence obtained as a result of search and seizure and motion to suppress statements, admissions, and answers. [Dkt. Nos. 39, 40.] The defendant subsequently filed a motion to dismiss for constitutional violations on October 29, 2020, the day before the motions hearing in this case. At the motions hearing the government offered five

exhibits into the record, one of which was the defendant's plea agreement entered in the Red Lake Nation Tribal Court wherein he agreed to plead guilty to the tribal charges stemming from the same robbery incident for which the government indicted the defendant. [Govt. Ex. 5.] As the agreement indicates, the defendant was sentenced to one year in tribal jail for the incident.

In his motion and his post-hearing memorandum in support of his motion regarding this matter, the defendant now seeks to dismiss the indictment in its entirety based on alleged constitutional violations. [Dkt. No. 134.] The defendant's motion should be denied as his federal prosecution does not violate Double Jeopardy clause or equal protection principles in the Due Process clause of the Fifth Amendment.

II. Argument

A. **The Double Jeopardy Clause is not offended as successive prosecutions are not barred among dual sovereigns.**

The defendant's motion to dismiss the indictment for constitutional violations based on Double Jeopardy lacks basis. Under the Fifth Amendment's Double Jeopardy Clause, no person can be prosecuted twice for the same offense. U.S. Const. amend V. One significant exception to that general bar, however, is the dual sovereignty doctrine. Two prosecutions, as the Supreme Court has long held, "are not for the same offense if brought by different sovereigns – even when those actions target the identical criminal conduct through equivalent criminal laws." Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863, 1870 (June 9, 2016). Indeed, "[t]he Double Jeopardy Clause reflects the common-law conception of crime as an offense against the sovereignty of the government; when a

defendant in a single act violates the peace and dignity of two sovereigns by breaking the laws of each, he has committed two distinct offenses.” U.S. v. Lara, 541 U.S. 193, 197 (2004). Hence, tribal prosecution does “not amount to an exercise of federal power, and the [t]ribe act[s] in its capacity of a separate sovereign.” Id. at 210. “Consequently, the Double Jeopardy Clause does not prohibit the Federal Government from [subsequently] proceeding with [a] prosecution for a discrete federal offense. Id. (citing Heath v. Alabama, 474 U.S. 82, 88 (1985)).

Gamble v. United States, 139 S. Ct. 1960, 1964 (2019) reaffirmed “a crime under one sovereign’s laws is not the same offence as a crime under the laws of another sovereign.” And shortly after issuing the decision in Gamble, the Supreme Court denied a petition for writ of certiorari in a case challenging a federal prosecution on Double Jeopardy grounds based on an earlier conviction for the same offense by the Northern Cheyenne Tribe. Bearcomesout v. U.S., 139 S. Ct. 2739 (June 24, 2019). Thus, tribal prosecution does not preclude federal prosecution, as recently recognized in U.S. v. Fisher, No. 19-CR-320 (SRN/LIB), 2020 WL 6106289, at *6–7 (D. Minn. July 7, 2020), report and recommendation adopted, No. 19-CR-320 (SRN/LIB), 2020 WL 4727429 (D. Minn. Aug. 14, 2020) (citing Lara). Here, Stately pleaded guilty to third degree aggravated assault, aggravated robbery, theft, handling a dangerous weapon, disorderly conduct, and conspiracy in tribal court. [Govt. Ex. 5.] Because tribal prosecution does “not amount to an exercise of federal power,” the government is not barred from also prosecuting Stately. Lara, 541 U.S. at 210. Stately himself acknowledges Lara precludes his motion. [Dkt. No. 134 at 14.]

Finally, the defendant cites the Petite policy [Dkt. No. 134 at 7-11], in support of his argument. However, the Petite policy does not apply to tribal court convictions and indeed, makes no mention of such convictions. The defendant cannot raise the Petite policy as a shield against the dual sovereignty doctrines as the policy only applies to prior state or federal prosecutions. Furthermore, as the defendant recognizes, even if it did apply it does not confer substantive rights [Dkt. No. 134 at 11 (citing United States v. Lester, 992 F.2d 174 (8th Cir. 1993))] and therefore may not be invoked to obtain dismissal of a federal indictment. See also U.S. v. Williams, 2015 WL 1471059, at *2-3 (E.D. Wash. Mar. 31, 2015); U.S. v. Flett, 2013 WL 1742269, at *1 (E.D. Wash. Apr. 23, 2013).

B. Federal prosecution of tribal members does not violate equal protection principles in the Due Process Clause of the Fifth Amendment.

When Congress enacted Section 1153, Title 18, of the United States code, it expressly subjected Indians who commit certain offenses, in this case robbery, against the person or property of another Indian to federal prosecution. Congress's treatment of Indian defendants and non-Indian defendants differently in a prosecution does not violate the equal protection component of the Due Process Clause. See U.S. v. Antelope, 430 U.S. 641 (1997) (prosecution of Indian for felony murder under 18 U.S.C. §§ 1111 & 1153 does not violate equal protection principles even though a non-Indian could not be prosecuted for a like offense under the state law applicable to non-Indian defendants). Legislation that "singles out Indians for particular and special treatment" will be upheld "[a]s long as the special treatment can be tied rationally to the fulfillment

of Congress' unique obligation toward the Indians.” Morton v. Mancari, 417 U.S. 535, 554-555 (1974). Thus federal criminal statutes do not “violate the ‘equal protection requirements implicit in the Due Process Clause of the Fifth Amendment’ because distinctions based upon tribal affiliations were not invidious race-based distinctions; they were distinctions based upon ‘the quasi-sovereign states of [Indian tribes] under federal law.’” United States v. Cavanaugh, 643 F.3d 592, 605–06 (8th Cir. 2011) (quoting U.S. v. Antelope at 644, 646).

III. Conclusion

For the foregoing reasons, the government respectfully requests that the Court deny Defendant’s motion to suppress statement.

Dated: December 14, 2020

Respectfully Submitted,

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s/Gina L. Allery

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