UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	Case No. 1:00CR00104
	)	
v.	)	**OPINION AND ORDER**
	)	
SAMUEL STEPHEN EALY,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Thomas J. Bondurant, Jr., and Anthony P. Giorno, Office of the United States Attorney, Roanoke, Virginia, for United States of America; Thomas R. Scott, Jr., Street Law Firm, Grundy, Virginia, and Thomas M. Blaylock, Roanoke, Virginia, for Defendant Samuel Stephen Ealy.

In this capital criminal case, I deny the defendant Ealy's motion to dismiss based on double jeopardy grounds because prosecution by separate sovereigns does not violate the Double Jeopardy Clause.

I

The defendant, Samuel Stephen Ealy, and a co-defendant, Walter Lefight Church, were indicted on December 13, 2000, by the grand jury of this court for various federal crimes arising out of the killings of Robert Davis, Una Davis, and

Robert Hopewell on April 16, 1989.[1] In 1991, Ealy had been tried in state court on charges of murder for the same killings, and was acquitted.

In the present case, Ealy has filed a Motion to Dismiss Pursuant to the Double Jeopardy Clause of the Fifth Amendment, arguing that because he has been tried and acquitted in state court, the current federal prosecution based on the same conduct violates his Fifth Amendment right not to be "twice put in jeopardy of life or limb" for the same offense. U.S. Const. amend. V. For reasons discussed below, I will deny the defendant's motion.

II

It is well-settled that the Double Jeopardy Clause is not violated by successive prosecutions in state and federal courts for crimes arising from the same acts of the defendant. As stated by the Supreme Court in *United States v. Lanza*, 260 U.S. 377, 382 (1922),

> [A]n 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. . . . The defendants thus committed two different offenses by the same act, and a conviction by a [state court] of the offense against that state is not a conviction of the different offense against the United States, and so is not double jeopardy.

[1] Since the initial indictment, two superceding indictments have been returned, the latest on July 13, 2001.

In refusing to overrule *Lanza*, the Supreme Court reasoned that "if the States are free to prosecute criminal acts violating their laws, and the resultant state prosecutions bar federal prosecutions based on the same acts, federal law enforcement must necessarily be hindered." *Abbate v. United States*, 359 U.S. 187, 195 (1959). Finally, the Supreme Court has recognized that overwhelming precedent supports that double jeopardy is not implicated in successive trials by two sovereigns. *See Bartkus v. Illinois*, 359 U.S. 121, 136 (1959) ("With this body of precedent as irrefutable evidence that state and federal courts have for years refused to bar a second trial even though there had been a prior trial by another government for a similar offense, it would be disregard of a long, unbroken, unquestioned course of impressive adjudication for the Court now to rule that due process compels such a bar.").

The defendant cites the opinions of Judge Williams of this court in *United States v. Belcher*, 762 F. Supp. 666 (W.D. Va. 1991) ("*Belcher I*"), and *United States v. Belcher*, 769 F. Supp. 201 (W.D. Va. 1991) ("*Belcher II*"), for the proposition that the federal prosecution in this case puts Ealy in double jeopardy. Those cases are readily distinguishable. In the *Belcher* cases, the defendant was prosecuted in federal court by a special assistant United States attorney who was the same state prosecutor who had failed to get a conviction in state court. *Belcher I*, 762 F. Supp. at 668-69. The court found that this situation amounted to a "sham prosecution," and therefore fell into a narrow exception to the dual sovereign principle of double jeopardy jurisprudence. *See*

id. at 670-71. The *Belcher* facts have been recognized as unique. *See United States v. Trammell*, 133 F.3d 1343, 1350 (10th Cir. 1998). Moreover, there is no indication that the state prosecution here was "dominated, controlled, or manipulated" by federal prosecutors. *See United States v. Montgomery*, No. 98-4688, slip. op. at 5 (4th Cir. July 17, 2001).

III

For the foregoing reasons, it is **ORDERED** that the defendant Ealy's Motion to Dismiss Pursuant to the Double Jeopardy Clause of the Fifth Amendment (Doc. No. 84) is denied.

ENTER: July 30, 2001

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United States District Judge