

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60659

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LONNIE HAYNES,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Southern District of Mississippi  
(CR-5:94-4)

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November 13, 1995

Before WIENER, EMILIO M. GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Having reviewed the record, entertained oral argument, and carefully considered Appellant Lonnie Haynes's claimed errors, we find Appellant's claims without merit. Accordingly, we affirm the judgment of conviction and note the following:

1. The district court did not err in refusing to suppress evidence following Appellant's arrest because all evidence sought to be excluded resulted from either a legitimate consent search or

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

an independent source and not from Appellant's arrest.

2. Appellant's statutory speedy trial claim fails because his state arrest did not trigger the Speedy Trial Act. See United States v. Charles, 883 F.2d 355, 356 (5th Cir. 1989), cert. denied, 493 U.S. 1033 (1990). Appellant's constitutional speedy trial claim fails because he does not satisfy the delay prong of Barker v. Wingo, 407 U.S. 514, 530 (1972). See Nelson v. Hargett, 989 F.2d 847, 851-52 (5th Cir. 1993).

3. Appellant's due process rights were not violated by a four-month pre-indictment delay because no actual prejudice occurred as a result.

4. The district court did not abuse its discretion by quashing the subpoena of Assistant United States Attorney Al Jernigan because his testimony was immaterial to Appellant's defense. See United States v. Masat, 948 F.2d 923, 933 (5th Cir. 1991), cert. denied, 113 S. Ct. 108 (1992).

5. Appellant's prosecution on federal drug charges, following a state forfeiture proceeding on state drug charges, is not barred by double jeopardy because prosecution by dual sovereigns is not prohibited if an act violates the laws of both sovereigns. See United States v. McKinney, 53 F.3d 664, 676 (5th Cir.), cert. denied, 116 S. Ct. 261 (1995).

6. Appellant was not the subject of selective prosecution because no other similarly situated individuals who committed the same crime were not prosecuted. See United States v. Sparks, 2 F.3d 574, 580 (5th Cir. 1993), cert. denied, 114 S. Ct. 720 (1994).

AFFIRMED.