IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2785

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

HARRY ALFRED HADLOCK,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CR H 93 75 2)

June 9, 1994

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Harry Hadlock, Jr., was indicted for one count of carjacking, in violation of 18 U.S.C. § 2119, and one count of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). The district court dismissed the second count of the indictment, and the Government appeals. We reverse and remand.

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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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

On December 30, 1992, in Houston, Texas, Hadlock, Peter Louis Shafick, and Ed Sokolowski accosted Patricia Wade as she returned home in her Honda Accord. Hadlock pointed a firearm at Wade and forced her from her car. The three men then entered Wade's car and drove away.

Hadlock entered a guilty plea to both counts of the indictment. Prior to sentencing, however, Hadlock filed a motion to dismiss count two of the indictment, arguing that his conviction and sentence for both crimes violated the Double Jeopardy Clause of the Constitution. The district court granted the motion and dismissed the second count of the indictment. The district court then sentenced Hadlock to fifty-one months in prison, to be followed by three years of supervised release. The district court also imposed a $50 special assessment and ordered restitution in the amount of $83.27. The Government filed a timely notice of appeal.

II.

The Government argues that the district court erred in granting Hadlock's motion to dismiss count two of the indictment. The district court found that prosecuting the defendant under both statutes was barred by the Blockburger "same offense" test, as enunciated by the Supreme Court in Blockburger v. United States, 284 U.S. 299 (1932). We review de novo the district court's legal conclusion that such dual prosecution is indeed

barred. United States v. Singleton, 16 F.3d 1419, 1421 (5th Cir. 1994). As the Government notes, this Court addressed this exact question in United States v. Singleton and explicitly held that double jeopardy does not preclude convictions and cumulative punishment for violations of 18 U.S.C. §§ 2119 and 924(c). The Court stated that "§ 924 clearly indicates Congress' intent to punish cumulatively violations of §§ 924(c) and 2119. That clear indication saves the statutes from the double jeopardy bar even though they fail the Blockburger test." Id. at 1425; see also United States v. Portillo, 18 F.3d 290, 291-92 (5th Cir. 1994).

Hadlock, in effect, urges this Court to overrule its decision in Singleton. One panel of this Court, however, may not overrule the decision of a prior panel "in the absence of an intervening contrary or superseding decision by the court en banc or the Supreme Court." United States v. Sherrod, 964 F.2d 1501, 1507 (5th Cir.), cert. denied, 113 S.Ct. 832 (1992). There has been no intervening decision that should alter the judgment of this Court in Singleton.

III.

For the foregoing reasons, we find that the district court erred in granting the motion to dismiss the second count of the indictment. Therefore, we REVERSE the dismissal and REMAND the case to the district court with instructions to reinstate the second count of the indictment.