

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-8577  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RUDOLPH RIVAS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas

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(SA-93-CR-52-1)

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(March 24, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

Defendant-Appellant Rudolph Rivas was charged by superseding indictment with two counts of carjacking, 18 U.S.C. § 2119, and two counts of using a firearm during a crime of violence, 18 U.S.C. §

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

924(c).<sup>1</sup> The district court denied Rivas' motion, premised upon double jeopardy grounds, to dismiss the indictment or to compel the election of counts.

Rivas unconditionally pleaded guilty to the carjacking counts, while conditioning his guilty plea to the § 924(c) counts to an appeal regarding the district court's denial of his motion to dismiss or to compel election of counts. Fed. R. Crim. P. 11(a)(2).

#### OPINION

Rivas argues that convictions under sections 924(c) and 2119 result in multiple punishment for the same offense, thus violating the prohibition against double jeopardy. This Court's review is de novo. See U.S. v. Botello, 991 F.2d 189, 192 (5th Cir. 1993), cert. denied, 114 S.Ct. 886 (1994).

This case is controlled by the recent decision of another panel of this Court in United States v. Singleton, No. 93-3479, 1994 WL 71535, \_\_\_ F.3d \_\_\_ (5th Cir. March 10, 1994), which dealt with the same contention. In Singleton, Judge Wisdom concluded:

"We are satisfied, however, that Congress has made a sufficiently clear indication of its intent to impose cumulative punishments for violations of § 924(c) and all crimes of violence, including 'carjacking', to satisfy the requirements of the Double Jeopardy Clause."

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<sup>1</sup>Count Five charged Rivas with being a felon in possession of a firearm. The district court dismissed this count after imposing sentence.

Id. at \*8. Accordingly, we affirm the district court's denial of Rivas' motion to dismiss the indictment or to compel the election of counts.

AFFIRMED.