

IN THE SUPERIOR COURT OF BULLOCH COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

DANNY JOE SALDANO, and
VINCENT SALDANO,

Defendants.

)
) Criminal Action
) File No. SUCR2021000198M
)
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)
)


Heather Banks McNeal, Clerk
Bulloch County, Georgia

ORDER DENYING SPECIAL DEMURRER TO INDICTMENT

Defendants are before the Court on a Special Demurrer to Indictment in which they allege that their re-indictment in this case is a product of prosecutorial vindictiveness. Specifically, they argue that their re-indictment is a result of the recent mistrial in Danny Saldano's case SU19CR514P.

Although prosecutors have broad discretion in how to charge a defendant and may seek a superseding indictment at any time prior to trial, a defendant may obtain dismissal of a superseding indictment by establishing that the prosecutor acted vindictively, meaning that the prosecutor was motivated by a desire to punish the defendant for exercising his rights. To establish prosecutorial vindictiveness, the defendant must either provide evidence of actual vindictiveness or show that the particular circumstances of his case give rise to a presumption of vindictiveness. To determine whether the presumption of vindictiveness applies, we must examine whether the prosecutor's actions in the context of the entire proceedings establish a "realistic likelihood of vindictiveness."

Gerbert v. State, 339 Ga. App. 164, 180, 793 S.E.2d 131, 145–46 (2016). "[N]o presumption of prosecutorial vindictiveness arises" from "[a] mistrial resulting from an inability of a jury to reach a verdict, especially when entered on the trial court's own motion." Griffin v. State, 266 Ga. 115, 120, 464 S.E.2d 371, 376 (1995).

Here, there is no evidence of prosecutorial vindictiveness. Defendants' bare assertion that the "State's indictment of Vincent Saldano is the proximate result of its unsuccessful prosecution of Danny Joe Saldano" is unavailing as a mistrial, particularly one declared by the trial court on its own motion as is the case here, does not create a presumption of prosecutorial vindictiveness. Additionally, the Court notes that the Defendants' cases are now being handled by a different assistant district attorney than the one who handled the original indictment. Further, the assistant district attorney indicated that the Defendants were jointly re-indicted for the purposes of judicial economy, which due to the backlog created by the COVID-19 pandemic, is a matter of real concern. Finally, having examined the entirety of the proceedings to this point and considering the context, the Court does not find a realistic likelihood of vindictiveness in this case.

WHEREFORE, Defendants' Special Demurrer to Indictment is hereby **denied**.

SO ORDERED this 27 day of April, 2021.


MICHAEL T. MULDREW
Judge, Bulloch County Superior Court
Ogeechee Judicial Circuit