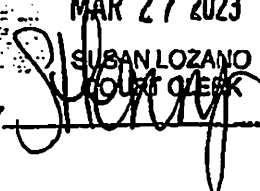


IN THE DISTRICT COURT FOR THE CHOCTAW NATION OF OKLAHOMA

CHOCTAW NATION OF OKLAHOMA )  
 )  
 )  
 vs. )  
 )  
 G.W. ROWDY WEBSTER )

FILED  
CHOCTAW NATION OF OKLAHOMA  
DISTRICT COURT CLERK  
Case No. CM-2023-13  
MAR 27 2023  
SUSAN LOZANO  
COURT CLERK  
BY  DEPUTY

**ORDER**

There came on before this Court Defendant G.W. Rowdy Webster's ("Defendant") Motion to Dismiss ("Motion"), filed herein on February 23, 2023. The parties agreed for the Court to decide the Motion on the pleadings and without oral argument. See Court's Order of March 10, 2023.

The basis of Defendant's Motion is that the District Court of Atoka County, State of Oklahoma, entered a protective order against the alleged victim in the current matter in response to "competing" petitions for protective orders filed by the Defendant and the alleged victim. Defendant contends that "this matter has already been heard and decided by the Atoka Court" and therefore this domestic abuse criminal misdemeanor case against Defendant should be dismissed. The Defendant is apparently requesting that this Court hold that the doctrines of either collateral estoppel or double jeopardy bar the Choctaw Nation of Oklahoma ("CNO") from pursuing any criminal charges against the Defendant, as a result of the protective order ruling from the District Court of Atoka County. For the reasons set forth herein, Defendant's Motion is **DENIED**.

Oklahoma holds that protective order proceedings under Oklahoma's Protection from Domestic Abuse Act are civil in nature. See *Sunderland v. Zimmerman*, 2019 OK CIV APP 27, ¶ 10, 441 P.3d 179. Therefore, this Court must determine whether a civil protective order proceeding in an Oklahoma State Court can bar a criminal prosecution in this Court.

Analysis of Defendant's Motion necessarily raises the issues of double jeopardy and collateral estoppel. The United States Supreme Court has held that the principle of collateral estoppel is part of the Double Jeopardy Clause. *Ashe v. Swenson*, 397 U.S. 436, 442, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). The doctrine of collateral estoppel stands for the principle that "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Id.* at 443. The distinction between double jeopardy and collateral estoppel is that double jeopardy prohibits a subsequent prosecution of the crime itself, while collateral estoppel forbids the government from relitigating certain facts in order to establish the fact of the crime. *See U.S. v. Rogers*, 960 F.2d 1501, 1506 (10th Cir. 1992). As stated in *State v. Hooley*, 2012 OK CR 3, 269 P.3d 949, the doctrine of collateral estoppel, while better known as a civil law concept, is applicable to criminal cases and serves to: "(1) reduce chances of wrongful conviction after an acquittal, (2) strengthen notions of finality, (3) preserve judicial resources, and (4) restrain overzealous prosecutors." *Id.* at ¶ 9.

Courts are only required to apply the principals of collateral estoppel in criminal cases "if and only if the protections of the Double Jeopardy Clause have been triggered." *Smith v. Dinwiddie*, 510 F.3d 1180, 1186 (10th Cir. 2007). In the instant matter, the Double Jeopardy Clause has not been triggered. The Double Jeopardy Clause does not bar criminal proceedings by separate sovereigns. *See U.S. v. Lara*, 541 U.S. 193, 124 S.Ct.1628 (2004) (Double Jeopardy Clause did not prohibit the Federal Government from proceeding with prosecution against tribal member for assault and battery after tribal prosecution). Additionally, the Double Jeopardy Clause only prohibits twice punishing a person *criminally* for the same offense, and as set forth above, the State Court protective order proceedings were civil in nature. Because the Defendant will not suffer successive *criminal* punishments, the double jeopardy does not bar this criminal prosecution of the

Defendant. *See e.g., Smith v. Dinwiddie*, 510 F.3d 1180 (10th Cir. 2007) (deprived child proceedings were civil in nature, and thus criminal proceedings for sexually abusing a minor child were not barred by double jeopardy); *Price v. Reed*, 1986 OK 43, 725 P.2d 1254 (double jeopardy was not applicable to regulatory governmental civil/regulatory proceedings to revoke driver's license).

This Court is not required to apply the collateral estoppel doctrine in this case since the Double Jeopardy Clause does not bar these criminal proceedings. *See Dinwiddie*, 510 F.3d at 1188. However, the application of doctrine of collateral estoppel would still not merit dismissal of this action. In order for collateral estoppel to apply in these criminal proceedings, *all* of the following elements must be established: (1) the issue previously decided is identical with the one presented in the action in question; (2) the prior action has been finally adjudicated on the merits; (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action. *Harrison v. Eddy Potash, Inc.*, 248 F.3d 1014, 1022 (10th Cir.2001), *cert. denied*, 534 U.S. 1019, 122 S.Ct. 543, 151 L.Ed.2d 421 (2001).

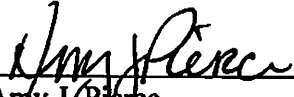
The foregoing elements of collateral estoppel are not met. First, the issues decided in the protective order are not identical to those in this criminal proceeding. The underlying protective orders appear to be based upon events that allegedly occurred on September 19, 2022 (in which the Defendant contends the alleged victim physically attacked him and threatened him) and certain occasions between July 11, 2021 and September 4, 2022 (in which the alleged victim claims she was assaulted by Defendant on various dates during this time frame). *See Exhibits A-D to CNO's Response Brief*. However, the information filed in these criminal proceedings reflects that the charges stem from an alleged event that occurred on September 5, 2022. *See Information*, filed

herein on January 6, 2023. Second, the CNO prosecutors were not in privity with any party in the State protective order proceedings. *See e.g. State v. Brown*, 927 A.2d 569 (N.J. Super. Ct. 2007) (prosecutor not in privity with any party in a protective order proceeding, even if prosecutor assisted victim in pursuing protective order). Accordingly, the four elements of collateral estoppel are not met.

Numerous other courts have held that domestic violence protective order proceedings do not bar criminal charges. *See e.g. State v. Brown*, 927 A.2d 569, 505 (N.J. Super. Ct. 2007) (prosecution for criminal sexual assault was not barred by prior domestic violence restraining order proceedings under doctrines of double jeopardy or collateral estoppel); *State v. Manista*, 651 A.2d 781, 782–86 (Del.Fam.Ct.1994) (criminal charge of harassment was not barred by protective order proceedings); *People v. Wouk*, 739 N.E.2d 64 (Ill.Ct.App., 1st Dist.)(2000) (refusing to apply collateral estoppel doctrine to preclude prosecution for domestic battery due to dismissal of protective order); *State v. Hughes*, 863 A.2d 266, 268 (Me. 2004)(alleged victim sought protective order against defendant, which was denied, but denial was not a double jeopardy or collateral estoppel bar to criminal prosecution). *See also State of Ohio v. Ohm*, 736 N.E.2d 121 (Akron Mun. Ct., (2000) (stating that to allow findings in domestic violence actions to determine outcome in criminal proceedings would force domestic violence victims to choose between obtaining a civil protection order or pursuing criminal charges, thereby frustrating purpose of civil protection); *Cleveland v. Hogan*, 699 N.E.2d 1020 (Cleveland Mun. Ct., 1998) (defendant charged with domestic violence moved to dismiss criminal charges on grounds that wife's unsuccessful petition for civil protective order operated to bar prosecution under doctrines of double jeopardy and collateral estoppel; court held that jeopardy did not attach in prior domestic relations and wife and city were not in privity so as to bar prosecution under collateral estoppel doctrine).

In light of the foregoing, this Court **DENIES** Defendant's Motion to Dismiss.

Entered this 27th day of March, 2023.

  
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Amy J. Pierce  
District Court Judge  
Choctaw Nation of Oklahoma District Court