

February 9, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-31072  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TELLY GALLIEN,

Defendant-Appellant

(Consolidated with)

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No. 04-31075  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

TRAVIS GALLIEN,

Defendant-Appellant

(Consolidated with)

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No. 04-31077  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

SIDNEY GALLIEN,

Defendant-Appellant

(Consolidated with)

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No. 04-31083  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

GEORGE CELESTINE,

Defendant-Appellant

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Appeals from the United States District Court  
for the Western District of Louisiana  
USDC No. 6:01-CR-60127-5  
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Before JONES, Chief Judge, and SMITH and GARZA, Circuit Judges.

PER CURIAM:\*

In this consolidated appeal, George Celestine, Telly Gallien, Travis Gallien, and Sidney Gallien appeal the denial of their motion to dismiss the case against them, which was based on double jeopardy grounds, following a mistrial. The defendants argue that the prosecution intentionally provoked them into moving for a

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

mistrial and that the district court erred by misapplying the principles given in Oregon v. Kennedy, 456 U.S. 667 (1982).

The appellants have not shown that the district court's denial of their motion to dismiss was erroneous. The district court's finding that the prosecution did not intentionally provoke the defendants into moving for a mistrial was not clearly erroneous. See Kennedy, 456 U.S. at 675-76; United States v. Gonzalez, 76 F.3d 1339, 1342 (5th Cir. 1996). To the contrary, the record strongly supports the district court's findings concerning the inadvertence of the error that led to the mistrial and the parties' desires, or lack thereof, for the mistrial. Our review of the record and the district court's detailed reasons for judgment also refutes the appellants' contention that the denial of their motion was grounded in a misapplication of Kennedy.

The appellants have shown no error in the judgment of the district court. Accordingly, that judgment is **AFFIRMED**.