

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-41222
Summary Calendar

United States of America,

Plaintiff-Appellee,

versus

Eduardo Villarreal, Sr.,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas

(C-96-CR-152)

July 7, 1997

Before POLITZ, Chief Judge, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PER CURIAM:*

Eduardo Villarreal, Sr. was indicted on two counts of possession with intent to distribute cocaine. During his trial, a juror helped a case agent carry two boxes of evidence into the courthouse. Upon learning of the contact between a juror and a case

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

agent, the district court granted Villarreal's motion for a mistrial. Villarreal now contends that the double jeopardy clause bars the government from prosecuting him. The double jeopardy clause bars the government from prosecuting a defendant who successfully moved for a mistrial only if the government "goaded" the defendant into moving for the mistrial.¹ Villarreal does not allege, and the record does not establish, that the case agent intentionally initiated contact with the juror or was directed to do so by the government. Consequently, Villarreal's double jeopardy argument is meritless.

AFFIRMED.

¹See *United States v. Botello*, 991 F.2d 189 (5th Cir. 1993), *cert. denied* 114 S. Ct. 886 (1994).